

**Refugee Review Tribunal
AUSTRALIA**

RRT RESEARCH RESPONSE

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RESPONSE

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6. What steps are the Romanian authorities taking to address official corruption?

Romania joined the European Union on 1 January 2007. In order to fulfil the accession requirements set by the EU, the Romanian government undertook measures throughout 2006 to eradicate corruption. Romania's anti-corruption efforts during this time are outlined in Freedom House's annual 'Freedom in the World' report on Romania for 2008:

In 2006, anticorruption agencies were reorganized and granted greater authority to investigate corruption at the highest levels, including in Parliament. The quantity and quality of high-level corruption probes increased significantly, and a number of officials, judges, and police officers were arrested and convicted. However, the June 2007 EU progress report noted a pattern of weak or suspended sentences in high-level corruption cases, blunting the effects of the stepped-up prosecutions. In July 2006, the government approved legislation to establish a National Agency for Integrity, tasked with vetting public officials' assets. It began operations in December 2007, but its future was uncertain after one of its chief proponents, Justice Minister Monica Macovei, was dismissed by the prime minister in April. In October, Agriculture Minister Decebal Traian Remes resigned after being caught on video arranging a bribe, and Macovei's replacement as justice minister, Tudor Chiuariu, resigned in December after allegedly abusing his position in a real estate deal. Romania was ranked 69 out of 180

countries surveyed in Transparency International's 2007 Corruption Perceptions Index, the worst ranking in the EU (Freedom House 2008, 'Freedom in the World – Romania', 2 July – Attachment 1).

To ensure that new Member States adhere to their pre-accession promises, the European Commission established a Cooperation and Verification Mechanism, which is used to assess progress against any benchmarks set upon accession, focusing particularly on judiciary reform and measures taken to address corruption (Mungiu-Pippidi, A. 2009, 'Nations in Transit 2009: Romania', Freedom House website, p. 412 <http://www.freedomhouse.hu/images/nit2009/romania.pdf> – Accessed 28 September 2009 – Attachment 2).

On 22 July 2009, the European Commission published a progress report on Romania, and in particular, an accompanying paper which provides a detailed assessment of Romania's progress towards each of the set benchmarks, one of which is to "take further measures to prevent and fight against corruption, in particular within the local government":

After a year of implementation of the National Anti-Corruption Strategy for Vulnerable Sectors and Local Public Administration 2008-10, there has been some progress on individual measures. However, a complete assessment of progress is not possible. Detailed and verifiable outputs are not available and actual tangible results are difficult to measure.

This Strategy provides an opportunity to deliver coherence and focus to efforts to prevent and deter corruption, but until now this seems to have been an opportunity that has not been exploited. The Steering Committee intended to oversee the Strategy and its action plans, and to make amendments has only met twice in the last 12 months, rather than the quarterly meetings foreseen. Nor has it considered any amendments to the Strategy despite criticisms from civil society as to its coherence and synchronisation. This has all contributed to the lack of a clear co-ordinated assessment of where actions have reached and what still needs to be done. Furthermore within the Romanian authorities awareness of the existence of the strategy is limited and there is confusion as to its scope. Reforms to the co-ordination arrangements being contemplated, including the creation of a technical working group to support the Steering Committee, are timely.

At the level of individual authorities various measures are being taken. These include simplification of administrative procedures, and measures to improve transparency, integrity and to reduce opportunities for corruption. Initiatives underway include the phased national roll out (not yet complete) of new more secure testing procedures for driving licences, as well as the ongoing introduction of an online tool to track applications with the National Agency for Cadastre and Land Registration. Such measures are replicated in other sectors, accompanied by other preventative including fast-track premium price application procedures, limiting of face-to-face contact with citizens, and random assigning of work or rotation of personnel. A telephone line to report problems (including corruption) encountered in the health system was established by the Ministry of Health. Despite progress in individual instances, the nationwide implementation and effectiveness of these measures is unclear, especially at the local level.

Three further awareness raising campaigns have been undertaken, all using EU funds. One of these campaigns was broad-ranging co-ordinated by the Ministry of Justice, whilst the other two, run by the Anti-Corruption General Directorate (DGA) of the Ministry of Administration and Interior (MAI), focused on deterring citizens from giving bribes. These awareness campaigns have been supplemented with various other initiatives, largely undertaken by the DGA who have used various media to distribute anti-corruption messages. In support of the results achieved from these campaigns, the Romanian authorities point to perception surveys they carried out in late 2008 illustrating an increased confidence in, and awareness of, the

anti-corruption activities of the institutions involved in the preventing and countering of corruption. However, this survey and other independent surveys highlight continued high levels of distrust. Outside of the MAI there remain many other vulnerable sectors which do not appear to have been especially targeted by such campaigns and there appears little co-ordinated assessment of where further campaigns can maximise their impact.

The National Integrity Centre has continued its work, including the running of training courses and the holding of regional anti-corruption debates. As a result of these debates the Centre has produced a number of recommendations for consideration by the Romanian authorities but it is unclear in many cases what consideration of these recommendations has taken place. Civil society has also undertaken a range of useful studies and made recommendations. In higher education for example a recent study found 77% of students and 35% of teaching staff consider corruption in universities as high. The same study also revealed that only 50% of the universities surveyed complied with the public procurement law. The study identified problems related to the far reaching interpretation of university autonomy and ineffective control mechanisms. Such studies clearly indicate the need for further steps and can usefully inform the institutions own strategies.

...Significant efforts have been made to strengthen the law enforcement and prosecutorial response to corruption. The General Prosecutor has adopted a set of measures to increase the effectiveness of local prosecutors' offices in corruption cases. The measures include the assessment of performance in this field, production of a best practices manual for handling corruption investigations, twice yearly exchange of experience session with DNA prosecutors, and the devising of a special programme of training seminars with the NIM. Moreover, the centre piece of these measures is the requirement upon each county prosecutors' office to produce their own strategies for combating corruption, taking into account the specifics of the corruption phenomenon in their locality. The strategies aim to deliver a more proactive approach to combating petty corruption and to foster a closer and more dynamic co-operation with other law enforcement partners.

The Fraud Investigation Directorate of the General Inspectorate of the Romanian Police has also prepared an anti-corruption measures programme setting out priority areas and risk factors as well as objectives and measures to enhance the institutional and functional capacity of the Romanian Police units involved in countering corruption. In December 2008 they finalised an action plan for tackling corruption in procurement in the health sector.

It remains too early to assess fully the results of these initiatives to strengthen the combating of petty corruption but the police are reporting an increase in intelligence leads and notifications to prosecutors, whilst there has been an increase in indictments made for corruption by local prosecutors' offices. A number of recent cases also indicate the emergence of a more proactive approach by certain offices and a greater focus on more complex cases but it is unclear whether this is a more widespread result yet. However, further steps are necessary to strengthen interinstitutional co-operation, to ensure the supply of timely and good quality information to prosecutors, and timely feedback to the Police. The introduction of common performance indicators is needed.

DGA has continued its work. Between 1 August 2008 and the end of April 2009 DGA submitted 861 files to prosecutors, who commenced criminal investigations in 216 files involving 606 persons (258 of whom were from the MAI), in which DGA's judicial police officers were delegated. During the same period prosecutors indicted 255 persons (68 persons were from the MAI of whom the majority (44) were from the Romanian Police) in 101 files in which DGA had assisted. During the same period DGA organised 1894 preventive meetings attended by 26084 Ministry personnel. They also prepared a guide for identifying risks and vulnerabilities to corruption within the Ministry and undertook an analysis of the risks. An action plan on preventing corruption within Directorate for Driving Licences and Vehicle

Registrations was prepared. By a recent Ministerial order the number of DGA staff has been increased by 28% and the internal structure has been reorganised to, amongst other motivations, reflect an increased desire to pursue corruption in public procurement. Corruption in public procurement is an important issue on which more needs to be done across the public sector.

The Department for the Fight against Fraud has also continued its administrative investigations into the fraudulent abuse of EU funds. Between 1 June 2008 and 15 March 2009 they had under investigation 128 cases of which 80 cases were finalised and in 49 cases potential frauds identified and forwarded to the competent prosecutors' office (European Commission 2009, 'Supporting Document Accompanying the Report from the Commission to the European Parliament and the Council on Progress in Romania Under the Co-operation and Verification Mechanism', European Commission website, 22 July, pp. 13-16 http://ec.europa.eu/dgs/secretariat_general/cvm/docs/sec_2009_1073_en.pdf – Accessed 24 September 2009 – Attachment 3).

An article in *The New York Times* dated 22 July 2009 highlights the European Commission report, claiming that despite some reform efforts, Romania is still beset by a high level of corruption and fraud. The will of political leaders to fight corruption and implement adequate reforms is questioned, although it is argued that the situation would be much worse had Romania not been admitted into the European Union in early 2007:

The hard-hitting judgment from the European Commission listed an array of deficiencies, citing inadequate measures to fight money-laundering, vote-buying, fraud and killings linked to organized crime.

...Romania fared slightly better in the report, though it was told that its reform efforts remain "fragmented."

With Croatia in talks to join the E.U., and several other nations in Southern and Eastern Europe also hoping to do so, the report may reinforce growing skepticism in some European capitals about the wisdom of further expansion.

"The bad news, and the slowdown in terms of reform in Romania and Bulgaria, can only weaken the case for further enlargement of the E.U.," said Nicu Popescu, research fellow at the European Council on Foreign Relations.

However, he added that both countries would have been in worse shape had they not been admitted to the E.U. in 2007, and are nevertheless much more successful than other nations in the region like Moldova or Ukraine.

"In fact enlargement has been a success because, though they are perceived to be bad by E.U. standards, Romania and Bulgaria are hugely successful by Eastern European standards," Mr. Popescu added.

In a statement, the president of the European Commission, José Manuel Barroso, underlined the need for greater political commitment to the task of rooting out corruption.

"Citizens in both countries and across the rest of Europe must feel that no one is above the law," he said.

Following publication of the report Bulgaria was given 21 recommended tasks to carry out, while Romania given 16. A special monitoring system for both countries, set up when the two countries joined the E.U. because of concerns that they weren't ready, is to be extended into 2010.

...There was no direct mention of the two countries' ambitions to join the Schengen zone, Europe's passport-free travel zone, though the tone of the documents released Wednesday suggest that is not a likely prospect in the near future.

...The Romanian justice minister, Catalin Predoiu, called for a political consensus that would enable the judicial system to function efficiently and the courts to take fast decisions.

"With or without a monitoring mechanism, Romania will remain committed to pursuing judicial reforms because such reforms are, first of all, in the interest of its citizens," Mr. Predoiu said.

Both governments know it will be hard to win over critics.

...As for Romania, the report said that permanent political infighting is hindering reform efforts.

"Against this background the positive results of concrete reform efforts at technical level remain fragmented, reforms have not yet taken firmly root and shortcomings persist."

Romania's record on combating corruption was questioned. "It is striking," the report said, "that virtually none of the cases of highest public interest have yet reached a decision" (Castle, S. 2009, 'E.U. Report Finds Bulgaria and Romania Beset With Problems', *The New York Times*, 22 July http://www.nytimes.com/2009/07/23/world/europe/23briefs-Brussels.html?_r=1 – Accessed 30 September 2009 – Attachment 4).

Transparency International's Global Corruption Barometer report published in May 2009 surveyed approximately 73,000 individuals around the world in order to determine the extent to which they perceive six key sectors and institutions in each country to be corrupt. The sectors included political parties, public officials/civil servants, parliament/legislature, business/private sector, the judiciary and the media. In Romania, the results showed that the parliament/legislature sector was perceived to be the most affected by corruption. On a scale of 1 to 5 measuring perception of the extent to which various institutions are affected by corruption (where 1 is not at all corrupt, and 5 is extremely corrupt), respondents on average scored Romania's political parties and parliament/legislature at 4.3; public officials/civil servants and business/private sector at 3.8; the media at 3.4; and the judiciary at 4.2; with an average score across all sectors of 4.0. In addition, 14 percent of respondents reported paying a bribe in the last 12 months; and fewer than 30 percent of respondents reported that they would be willing to pay more to buy goods from a corruption-free company. Significantly, 69 percent of respondents indicated that the current government's actions in the fight against corruption were ineffective (Transparency International 2009, 'Global Corruption Barometer 2009', May, pp. 5-6, 8, 16, 28, 30-33 <http://www.transparency.org/content/report/43788/701097> – Accessed 30 September 2009 – Attachment 5).

The most recent US Department of State human rights report on Romania released in February 2009 indicates that corruption is still widespread, with the government's lack of effective implementation of the prescribed criminal penalties for official corruption a significant problem. The report highlights "[t]he authorities' generally ineffective response to corruption", and the fact that "no major case of high-level corruption had yet resulted in judgments involving prison sentences":

The Ministry of the Interior and Administrative Reform is responsible for the national police, the gendarmerie, and the border police; the Office for Immigration; the General Directorate of

Information and Internal Protection, which oversees the collection of intelligence on organized crime and corruption; the General Anticorruption Directorate; and the Special Protection and Intervention Group. The national police agency is the Inspectorate General of Police, which is divided into specialized directorates and has 42 regional directorates for counties and the city of Bucharest. The internal intelligence service also collects information on major organized crime, major economic crimes, and corruption.

While police generally followed the law and internal procedures, police corruption remained a significant reason for citizens' lack of respect for the police and a corresponding disregard of police authority. Low salaries, which were sometimes not paid on time, contributed to the susceptibility of individual law enforcement officials to bribes. Instances of high-level corruption were referred to the National Anticorruption Directorate, which continued to publicize its anticorruption telephone hotline to generate prosecutorial leads for corruption within the police. Eight thousand posters were displayed throughout the country to publicize the hotline.

...Government Corruption and Transparency

The law provides criminal penalties for official corruption, but the government did not implement the law effectively. The country is subject to a special European Commission mechanism for regular monitoring for progress in justice sector reform.

The authorities' generally ineffective response to corruption remained a focus of public criticism, political debate, and media scrutiny throughout the year. NGOs and the media continued to note that no major case of high-level corruption had yet resulted in judgments involving prison sentences. While there were some convictions of lower-level officials for corruption, the European Commission, in its July interim progress report, criticized court sentences as "lenient and inconsistent" and parliament for lacking an "unequivocal commitment to rooting out high level corruption." Moreover, there were efforts to weaken the criminal procedure code, such as through parliamentary provisions requiring authorities to notify suspects that they are being wiretapped.

The National Anticorruption Directorate (DNA) was responsible for investigating and prosecuting high-level corruption, including cases involving members of parliament and government officials. Many anticorruption advocates criticized the justice minister's decision not to renew the mandate of the DNA head, whose anticorruption efforts were strongly praised by European Commission officials and media. He continued in his position on an interim basis at year's end.

The DNA continued its coordination with antifraud units set up within various ministries. The Interior Ministry's Anticorruption General Directorate, which investigates alleged corruption within the ministry, maintained an anticorruption telephone hotline to receive tips regarding corrupt officers from the general public. The Antifraud Department attached to the prime minister's office continued to investigate cases involving the misuse of EU funds. The Ministry of Defense also maintained its own antifraud section.

...There was little progress made in 10 cases involving former government ministers, due to the decision of the former parliament to block the investigation and to the dismissal of cases by the High Court of Cassation and Justice. The High Court's dismissal was based on the need to return the files of ministers to parliament for clearance (in three cases). By year's end, two of the 10 cases had been sent to court, three were with DNA, one had been rejected by parliament, and three were still pending in parliament.

In July 2007 the Constitutional Court declared that an ordinance permitting the DNA to initiate criminal investigations against former ministers without presidential or parliamentary

authorization was unconstitutional. Such authorization was previously required only prior to investigations against current government members. This procedural ruling resulted from an appeal in a case against former prime minister Adrian Nastase, who challenged the constitutionality of the ordinance that made it possible for former ministers to be investigated without following the procedure mandatory for incumbent ministers.

In March the Constitutional Court resolved the dispute between the General Prosecutor's Office and parliament over what specific authorizations were required for criminal investigations against former and current ministers. The court ruled that parliament must approve investigations against ministers who are sitting members of parliament, while the president would have to approve investigations of ministers who are not serving in parliament. In October the Constitutional Court lowered the number of votes needed from members of parliament to authorize criminal investigations against cabinet ministers.

The law empowers the National Integrity Agency (ANI) to audit officials' declarations of assets, incompatibilities, and conflicts of interest. The law stipulates that the ANI can identify "unjustified" wealth, meaning that proof of illegal activity is required before an investigation may be initiated. The government amended the ANI law by emergency ordinance the same month it was created, lowering the standard of investigation to proof of unjustified wealth, defined as a change in assets that cannot be justified based on an official's legitimate sources of income. The ANI is authorized to examine annual asset declarations, but not bank accounts or other assets of individuals without their permission. Anonymous tips of an official's unjustified accumulation of assets cannot be used as grounds to initiate investigations, absent a decision by the head of the agency to initiate an ex-officio investigation. Some critics have noted that this discretionary authority should be vested in more than a single individual.

There were reports of political interference in the ANI's activities. An ANI inspector disclosed that a member of the National Integrity Council, which oversees the ANI, pressured ANI officials to stop an investigation against one of her clients. The ANI president demanded that the individual in question have her mandate revoked. Overall, the independence of the ANI is limited due to its inability to hire and fire staff.

In December, following the elections, all but two government ministries were renamed. Critics claimed that this measure was undertaken to erode the civil service protection of many mid-level positions within the renamed ministries, thus opening those offices to political influence.

The law provides for public access [sic] to government information related to official decision making; however, human rights NGOs and the media reported that the law was poorly and unevenly applied. Procedures for releasing information were arduous and varied greatly by public institution. On numerous occasions, NGOs and journalists took cases to court to obtain information.

Although the government ordered the intelligence services to release the files of the communist-era Securitate intelligence service, the powers of the National College for the Study of Securitate Archives (CNSAS) were curtailed following a January 31 Constitutional Court ruling that the CNSAS law was unconstitutional. A government ordinance and a later law allowed the CNSAS to continue operation, but it was no longer entitled to issue verdicts that identify individuals as Securitate collaborators.

There were reports that local authorities occasionally impeded journalists, NGOs, and the general public from accessing public information that could have proved detrimental to select political interests (US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – Romania*, February, Introduction, Sections 1d, 3 – Attachment 6).

A Freedom House 'Nations in Transit' report on Romania published in 2009 also provides some detailed information on the government's anti-corruption efforts throughout the previous year, identifying problems with the accountability of the Superior Council of Magistracy, a lack of judiciary reform, continuing partial immunity for MPs, and amendments to the procedural code allowing suspects to be warned prior to home searches:

Corruption. Romania's anticorruption efforts were seriously hindered in 2008 by Parliament's efforts to reinstate immunity for ministers who also enjoy MP status. Many candidates in local and legislative elections, including some members of the government personally profited from abusing their positions. Several politicians tried to curtail the powers of the anticorruption agency and sack Chief Prosecutor Morar, but the President and Constitutional Court have prevented such efforts thus far.

...In 2008, the second year of Romania's European Union (EU) membership, the European Commission (EC) released two reports regarding the country's progress in meeting the benchmarks set out in the Cooperation and Verification Mechanism...The EC's findings were critical, stating that "greater evidence of implementation on the ground is needed in order to demonstrate that change is irreversible."

...The new electoral legislation also introduced direct election of county heads in local elections. But the new law does not overlap with the current powers that administrative law confers to county heads, who were nicknamed "local barons" by virtue of their informal power. The electoral changes proposed by the SDP empowered voters.

The Coalition for a Clean Government (CCG), including several nongovernmental organizations (NGOs) and unions, monitored the corruption of candidates for this position and informed voters with the help of local media, leading to electoral losses for many allegedly corrupt officeholders.

...President Băsescu constitutionally holds the power to appoint a prime minister and nominated Teodor Stolojan from his own party, LDP, which had obtained the highest number of seats. As the two main parties were so close to each other, Stolojan received the mandate to form a coalition with the other main party, SDP. Four days after his nomination and one day after a coalition protocol was signed, Teodor Stolojan announced his resignation as prime minister designate. That same day, President Băsescu signed a decree nominating the mayor of Cluj-Napoca and president of the LDP, Emil Boc, for the position. Boc vowed to create a government with the SDP and bring Romania out of the economic crisis but failed to agree with his allies on the reappointment of Monica Macovei, former minister of justice noted for her tough anticorruption position. An agreement was finally struck to keep Cătălin Predoiu as minister of justice, in exchange for his promise to reappoint Daniel Morar as chief attorney of the Romanian National Anticorruption Directorate (NAD).

...Most of the appropriation of government spending for localized projects is done legally, by adopting "exemptions" from local finance legislation, but individual corruption also persists. An impressive number of mayors from major cities and the main political parties have been charged by NAD with corruption. Mayors claim that a very restrictive legislative framework pushes them to breach laws to get things done. However, under Romanian anticorruption legislation, NAD can accuse a person only if indication of personal profit is found, not just proof of enacting illegal decisions. The CCG, a civil society group including NGOs and trade unions, monitored the integrity of candidates running for county council presidency in the June 2008 local elections. The posts, which are key for the implementation of both national and EU funds on a local level, were filled by direct election. Out of 150 candidates, the majority of which were incumbents, the coalition found that 54 had previous integrity lapses, corruption charges, and material profit from conflicts of interest or broken fiscal regulations in the distribution of funds. The majority of allegedly corrupt county council presidents were

not reelected, but 13 of the 54 questionable candidates concerned were elected. CCG did not monitor the integrity of mayors.

...Despite three, critical reports from the EC, and a special clause included in the Cooperation and Verification Mechanism concerning its activity, the SCM [Superior Council of Magistracy] has made no progress in enhancing its own accountability: Breach of ethics and potential conflicts of interests of its members persist. The activities foreseen in the action plan for meeting the benchmarks of the EU Cooperation and Verification Mechanism fail to address this problem, as no mechanism has been identified for increasing the accountability of the SCM, and the SCM has constantly denied that corruption is even a problem within the Romanian judiciary. However, a scandal broke in 2008 when NAD brought charges against top magistrates for fraud in the competition for management positions within a high-level prosecution office.

The July 2008 EC report predictably warned Romania to clean up its justice system while cutting aid to Bulgaria and leveling unprecedented criticism at the bloc's newest countries for failing to tackle corruption. Romania was let off with a warning to overhaul its judiciary. The SCM called these EU criticisms "constructive" but did nothing to address them.

...Corruption

The Constitutional Court ruled that ministers who are also MPs can be charged for crimes only with the approval of the chamber to which they belong, despite the removal of immunity for MPs in the 2003 constitutional reform package. Parliament postponed discussions on a NAD request to lift immunity for MPs that NAD had earlier charged (former ministers), so allowing them to stand trial, despite pressure from the media and Brussels. The judicial committees asked for complete files on the ministers' cases in order to decide if investigations are current and not "politically motivated." In August, the mandate of Daniel Morar, chief prosecutor of Romania's anticorruption agency, expired. Despite warnings from the EU that NAD should not be interfered with, Minister of Justice Cătălin Predoiu replaced Morar, proposing a magistrate with no anticorruption prosecuting record. The nomination was negatively received by the SCM and was returned to President Băsescu, who has final appointment power over prosecutors general. In an extraordinary summer session, Parliament voted to spare their colleagues from the ordeal of defending themselves in court, de facto ending their prosecution. They also passed an amendment to the nomination procedure of prosecutors, stripping the president of this right and granting it to the SCM instead. The bill ended in the Constitutional Court. Meanwhile, the prosecutor general gave interim powers to Morar until a final appointment was made. Labor Minister Paul Pacurariu, featured on television in an audio recording asking that a public job be granted to his son, lost his immunity and was immediately sacked by the president. He is officially the first Romanian minister dismissed for corruption.

Even more detrimental than hindering the cases of MPs from reaching the courts, Parliament modified amendments to the procedural code to favour criminals over prosecutors. Despite warnings from the EU that such amendments risk compromising the EU's ability to fight organized crime in an increasingly coordinated EU home and justice space, the Romanian Parliament maintained its main points even after the law was returned from promulgation by the president. The most notorious amendment calls for prosecutors to provide suspects with an advance warning prior to carrying out a home search warrant.

A crucial part of Romania's 2008 evaluation by the EU rested on the functioning of the National Integrity Agency (NIA), which monitors the assets and conflicts of interest of politicians, civil servants, and magistrates. The NIA Law, crippled the previous year by Parliament, curtailed the powers of the agency and was again amended by a government emergency ordinance to bring it closer to EU guidelines. By summer, however, the agency

had an insufficient budget, which then prime minister, Călin Popescu-Tăriceanu deemed “not a priority.” After the critical EU report, a compromise was made allowing the agency to check 17 politicians by the beginning of the fall 2008 electoral campaign. It also fined individuals who did not compile the legally required statements of assets. It is too early to assess the agency’s ability to fulfill its competences.

Romanian civil society has continued to play an effective role in anticorruption, monitoring Parliament, universities, and locally elected bodies. While the print media reports on corruption, television stations, whose owners are accused in various cases, have ignored or downplayed any investigation or substantial discussion on the matter (Mungiu-Pippidi, A. 2009, ‘Nations in Transit 2009: Romania’, Freedom House website, pp. 411-412, 414-415, 419-422 <http://www.freedomhouse.hu/images/nit2009/romania.pdf> – Accessed 28 September 2009 – Attachment 2).

In addition, a 2008 Transparency International report on global corruption describes some recent legal and institutional changes implemented in Romania, including the establishment of the National Integrity Agency (ANI) in May 2007, an independent anti-corruption agency. It is argued that “[t]he law establishing the ANI is one of the most important pieces of anti-corruption policy in Romania – and one of the most thoroughly debated”. The report also discusses judiciary reform, which is crucial since “the judiciary continues to be perceived as one of Romania’s most corrupt institutions”:

Legal and institutional changes

... • The Penal Code modifications also introduced provisions allowing for the penal responsibility of legal persons. With the exception of the state, public authorities and public institutions in domains outside private sector activity, the new law provides that all legal entities, such as companies, trade unions and foundations, are considered criminally responsible. This provision applies only to the corruption infractions of bribe-giving and trafficking in influence; all other offences require a physical person to play an active role in criminal transactions. The adoption of the measure falls within a series of steps taken towards transposing into internal legislation the Council of Europe’s Criminal Law Convention on Corruption and was particularly requested in the Group of States against Corruption Second Evaluation Report on Romania, issued in October 2005.

... • The work of the General Anti-Corruption Department (DGA), an investigation unit in the Ministry of Administration and Internal Affairs, was undermined in March 2007 when its director resigned in response to an unlawful performance review by a ministerial body. Legislation governing the DGA requires an independent performance review at the minister’s request. The DGA director is a magistrate, however, meaning that reviews belong in the jurisdiction of the Superior Council of the Magistracy (CSM). The ministry instead subjected the director to its own standing review committee, including some representatives actually under investigation by the DGA, constituting a clear conflict of interest.

• Despite the Anti-Corruption Department’s (DNA’s) intensive activity, the justice system has not yet produced convictions in cases of high-level corruption. More worryingly, recent practice has been to grant a large number of suspended sentences (i.e. with no prison time) in grand corruption trials, diluting the sanction to a simple mention on the individual’s criminal record. In the absence of decisive action by the judiciary, grand corruption cases are dealt with in the press rather than the court of law.

The fight over the National Integrity Agency

May 2007 finally saw the passage of a long-sought law to establish an independent anti-corruption agency. The National Integrity Agency (ANI) is designed to remedy shortcomings in the monitoring of conflicts of interest and public officials' assets. The law establishing the agency followed a series of drafts: one was written by TI Romania in 2004; a second by the minister of justice in June 2006; and a third was a heavily amended version of the second. The fourth and final version was adopted by the Senate in May 2007.

All four envisioned an institution that would verify asset declarations, and monitor unexplained wealth and possible conflicts of interest. All four provided for a three-tiered structure with a representative council, a management body and a body of inspectors to perform controls. All concurred that the submission of a false declaration of wealth or making false statements would be considered an act of forgery. Another point of convergence was that penalties for illicit enrichment, conflict of interest and incompatibilities were beyond the new agency's competence, so files would be forwarded to the Prosecutor's Office, disciplinary commissions or fiscal authorities. The ANI can impose fines only for failure to submit documents or for overstepping deadlines for submitting declarations.

The system previously in place was seriously fragmented, assigning wealth and conflict of interest control to separate institutions with little capacity for collaboration. This fragmentation prevented any unitary legal approach to corruption prevention. Further inefficiencies derived from the wealth control commission's lack of diligence and the absence of mechanisms to certify that declarations had been submitted. In addition, because conflict of interest complaints were assigned to authorities within the public institutions, there were no guarantees of impartiality or insulation from undue influence.

The law establishing ANI was adopted in a context of mounting pressure both at home and internationally. In 2004 a draft law by TI Romania was sent to parliament and passed the lower house, although the Senate delayed discussion for over a year. With the Second National Anti-Corruption Strategy (2005–7) the deficiencies in corruption prevention were clearly visible, and a proposal was put forth for the creation of 'a single independent body tasked with verifying asset and interest declarations, as well as incompatibility situations'. These domestic efforts were mirrored in pressure from the European Commission.

The adoption of the law establishing the ANI was no easy task. What particularly inflamed public debate were the radical modifications brought to the Ministry of Justice's draft by the Chamber of Deputies. Between 14 August and 11 October 2006 the chamber's legal commission returned with more than ninety-two separate modifications, which effectively left the ANI a highly dependent body with fewer powers. These modifications outraged the ministry and domestic NGOs, and increased the vigour of the debate. In response, TI Romania submitted a second document, 'Basic Principles for an Anti-corruption Public Policy Dedicated to the National Integrity Agency', which won support from civil society organisations.

The principles became the object of intense advocacy. TI Romania had proposed enlarging and improving the legal definition of conflict of interests, achieving a unitary regulatory framework for incompatibilities, and focusing wealth control on assets obtained during the occupation of public office only. It recommended that the ANI have operational independence, access to all public databases, a mandatory character for its decisions (which can, however, be appealed) and the power of dismissal of those in conflict of interest or incompatibility situations.

Applying the current legislation may be problematic. Having administrative jurisdiction, the institution may consider only conflicts of interests as defined by administrative law, which refers to benefits for oneself and immediate relatives solely of a material nature. This ignores non-material benefits and intermediaries. Criminal law contains a much wider definition,

meaning that the ANI can effectively do little to combat conflicts of interest despite its mission. Rather, it will be forced to forward findings to the Prosecutor's Office.

The risk of insufficient human or financial resources may also be a problem. The law provides for a maximum of 200 employees and a central office in Bucharest. These employees face the enormous task of checking the wealth and interest declarations of virtually all persons occupying positions in the public sector. Procedures for overcoming capacity constraints are lengthy and beyond the control of the ANI's management.

Anti-corruption agencies can easily become political weapons in the hands of those in power if not sufficiently insulated from pressure. Senate oversight may still allow influence over appointments and dismissals of agency management, which is unsettling because of the political class's inconsistent attitude towards the ANI. It is important to remember that the agency's belated creation was intimately connected to EU pressure, so the degree of genuine political support is difficult to ascertain. The instability of Romania's anti-corruption legislation and inconsistencies in its legal texts will negatively impact the ANI's performance.

Parliamentary disregard for standards of legislative technique make anti-corruption measures vulnerable to abusive interpretation. The law establishing the ANI seems no exception to this: on 30 May 2007, less than one month after its adoption, the government passed an emergency ordinance lowering the financial threshold for wealth control procedures. Although positive in itself, it would have been preferable to have included it in the original defining text for legal clarity.

The law establishing the ANI is one of the most important pieces of anti-corruption policy in Romania – and one of the most thoroughly debated. In the one to two years after the adoption of the law the ANI must demonstrate important successes if it is to make an impact. The chances of such success should be increased by connecting the institution to other preventive instruments, such as public awareness campaigns, anti-corruption education and whistleblower protection, eventually leading to more coherent corruption prevention.

The Superior Council of the Magistracy's enduring deficiencies

Reform of the judiciary has been a priority since 1990 (see Global Corruption Report 2005 and Global Corruption Report 2007). The prolonged negotiations for accession to the European Union were a powerful impetus for reform and stressed the independence of the judiciary as a central theme. In 2004 an overhaul of the judiciary was initiated through a package of three laws that empowered the Superior Council of the Magistracy as the official representative of the judiciary in its relations with other state authorities and the guarantor of its independence. The CSM consists of nine judges and five prosecutors, elected by their peers, and by law includes the minister of justice, the Supreme Court president, the general prosecutor and two civil society representatives. A number of sensitive issues, such as the appointment of magistrates, career development and disciplinary action, are placed exclusively in the CSM's competence. Three years after passing the three-package law, the CSM continues to be the target of criticism over its efficiency, credibility and integrity. It is illustrative that, of the four benchmarks instituted by the European Commission in September 2006, one explicitly targets the CSM: 'Ensure a more transparent and efficient judicial process notably by enhancing the capacity and accountability of the Superior Council of the Magistracy.'

The CSM made some progress towards implementing key measures within the official reform strategy for the judiciary during the period under review. It increased its administrative capacity, completed and ran new procedures for the promotion, relocation and transfer of magistrates and set up mechanisms to ensure uniform jurisprudence throughout the court

system (i.e. a mechanism of periodic consultation among judges and the so-called ‘appeal in the interest of law’).

Outstanding problems persist regarding CSM’s performance as a disciplinary body, however. This is particularly problematic as the judiciary continues to be perceived as one of Romania’s most corrupt institutions. In the course of 2006 the Disciplinary Commission received 231 complaints, mostly from litigants, of which 193 were dismissed. In the absence of decisive action by the CSM, the press and civil society have assumed a key role in monitoring the state of the justice system and the performance of magistrates. In response, judges and prosecutors perceive the press as the major factor of pressure on the judiciary.

The CSM also has serious flaws in its integrity standards. The legal framework requires CSM members to be suspended from positions in courts or prosecutors’ offices. At the end of 2006 five of fourteen elected members faced potential conflicts of interest as inspectors, since they also held leading positions (albeit suspended) in the judicial system. This not only raised serious ethical issues, it created a capacity deficit.

These conspicuous flaws, coupled with the limited impact of reforms on the judiciary, have further weakened the credibility of the magistracy. According to a TI Romania report, in 2006 only 43 per cent of magistrates thought that the CSM had the ability to guarantee their independence, compared to the 60 per cent who responded the same in 2005. The satisfaction of magistrates with the CSM has also decreased, with only 51 per cent saying that they were satisfied with the institution, compared to 61 per cent a year earlier (Transparency International 2008, *Global Corruption Report 2008: Corruption in the Water Sector*, pp. 261-266 – Attachment 7).

7. What protection is available to those in Romania who expose corruption?

A report by the Committee on Legal Affairs and Human Rights dated 14 September 2009 identifies Romania’s Whistleblower Protection Act of 2004 (Law No. 571/2004), which refers to the protection of “an individual who reveals violation of laws in public institutions made by persons with public powers or executives from these institutions”. The report explains that “[w]hilst the Romanian legislation is fairly progressive, it only applies to employees of the public sector”:

54. In Romania the protection of “whistle-blowers” is regulated by the Act on the Protection of “whistleblowers” (Law n°571/2004). The law refers to the protection of “whistle-blowers” against administrative measures by their superiors when they lodge official complaints based on good faith about suspected corrupt or unethical practices and violations of the law. The law respects the “whistle-blower”’s confidentiality.

55. The Romanian law is one of the rare European laws on the matter to propose a definition of the term of “whistle-blower”. The law states: “A ‘whistle-blower’ (avertizor) is an individual who reveals violation of laws in public institutions made by persons with public powers or executives from these institutions”. This definition must be read in conjunction with that of “whistle-blowing in the public interest”, which is defined as reporting, in good faith, on any deed to infringe the law, the professional ethical standards or the principles of good administration, efficiency, efficacy, economy and transparency.

56. This law sets out a list of the persons or officials to whom ‘whistle-blowing reports’ can be directed, and these include mass media and NGOs.

57. Whilst the Romanian legislation is fairly progressive, it only applies to employees of the public sector (Committee on Legal Affairs and Human Rights 2009, ‘The protection of “whistle-blowers”’, Council of Europe Parliamentary Assembly website, 14 September <http://assembly.coe.int/Documents/WorkingDocs/Doc09/EDOC12006.pdf> – Accessed 25 September 2009 – Attachment 8).

A 2008 conference paper by Transparency International Romania on the protection of whistleblowers explains that the effectiveness of the law on whistleblower protection is hindered by “significant deficiencies in the implementation framework”, and a “widespread lack of knowledge or even suspicion among its beneficiaries”. In addition, the paper states that the development of whistleblower protection policy in Romania reflects a weak political will to combat corruption. Although it is argued that the law has failed to deliver the results that were promised at the time of its adoption, the paper also identifies cases which have occurred in the four years since its passing where whistleblowers have been successful:

In the case of whistleblower protection policies successful implementation is very much dependent of the beneficiaries knowing and correctly understanding the measure. Blowing the whistle is essentially an individual choice, which by no means can be coerced by legislation, but merely incentivised through the institution of proper safeguards against retaliation. It is therefore an imperative prerequisite that policies in this field contain a strong awareness-raising component. Law no. 571/2004 provides for this appropriately – according to Article 11, each public entity has an obligation to harmonize their Interior Order Regulations to the provisions of the law. Unfortunately, the complete lack of penalties for failure to comply with this measure has severely impeded the implementation of the law. A recent research report focusing on the state of integrity in Romanian local governments shows that most public entities at the local level have not harmonized their internal regulations to cover issues of whistleblower protection, despite the fact that Law no. 571/2004 – and, implicitly, the requirement for harmonization – has now been in force for almost four years. Moreover, interviews with public employees have indicated widespread ignorance on the provisions of the law, suspicion and the recurrence of preconceived ideas. Apart from lack of sanctions, large-scale unawareness can also be explained by the absence of government-sponsored campaigns to familiarize public sector employees with the provisions of the law and the specific mechanisms of protection.

Implementation of Law no. 571/2004 was additionally hampered by the lack of an institutional structure to coordinate the process. Being closely connected to the area of ethics and conduct, the most likely institutional candidate for this function was the National Agency for Civil Servants. According to Law no. 7/2004 on the Code of Conduct for Civil Servants, NACS is tasked with monitoring implementation and conformity to the Code in public institutions, developing studies on this subject and collaborating with NGOs whose mission is to protect citizens’ legitimate interests in relation to civil servants. NACS issues a yearly report on the management of the civil service corps, which contains a distinct section on compliance with conduct standards and disciplinary sanctions incurred for failure to do so. More importantly, NACS is empowered to investigate breaches of the Code of Conduct in public institutions (at its own initiative or at the request of an aggrieved person) and to recommend solutions, including the application of disciplinary sanctions. NACS’s attributions of investigating and reporting on ethical breaches could have easily been extended to cover the area of whistleblower protection – unfortunately Law no. 571/2004 does not include such a provision in its text and the institution was reluctant to supplement the deficiency through its own subsequent regulations .

Implementation of whistleblower-protection measures at agency level is also weak. Little if any on-the-job training has been delivered to cover this issue with employees. Moreover, until recently there was no ethical guidance available at agency level in the Romanian public

system. The situation changed with Law no. 50/2007, which introduced an obligation for all public entities employing civil servants to appoint a so-called “conduct councillor”, which would provide assistance and advice on conduct norms, would monitor implementation of the Code of Conduct and report periodically on the level of compliance. The existence of a conduct councillor can definitely improve ethics policies at institutional level. Unfortunately, the legal provisions have several shortcomings that may limit the utility of this newly established position. First, the absence of a transparent and competitive appointment procedure, including clear, relevant and impartial selection criteria is liable to compromise the councillors’ objectivity and credibility from the very beginning. Second, application of Law no. 50/2007 is inexplicably limited to civil servants, leaving uncovered the equally important category of contractual employees, who are subject to a code of conduct very similar to that of civil servants. Third, the law makes no reference whatsoever to the protection of whistleblowers, which is bound to be a crucial coordinate in the councillors’ activity (they can offer information and guidance to employees regarding whistleblower protection measures, they can become recipients of public interest disclosures or be whistleblowers themselves).

The significant deficiencies in the implementation framework explain the general ineffectiveness of whistleblower protection regulations in Romania. Without a coordinated awareness-raising effort and strong institutional mechanisms to oversee implementation, both in central government and at agency-level, the law is not used and therefore not reaping results, despite its tremendous anticorruption potential. Unfortunately, this state of affairs is not peculiar to whistleblower protection policies, but characterizes other anticorruption instruments as well, and is symptomatic of a purely formalistic approach of the Romanian government, which proved interested only in fulfilling international commitments and less so in the actual impact of an anticorruption measure.

Soon after the passing of Law no. 571/2004 TI Romania has engaged in a series of activities aimed at assessing and supporting the implementation of whistleblower protection policies. This has been a constant concern of the organization in the following years as well.

After the 30-day deadline for harmonization of the Interior Order Regulations (i.e.: January 20th 2005) had passed, TI Romania sent out to all ministries information requests soliciting copies of their internal regulations, where the articles adapted to the provisions of Law no. 571/2004 would be distinctly indicated. In the same request to the ministries, Transparency International Romania solicited information on the harmonization of interior regulations in all institutions and authorities subordinate to those ministries.

Only 13 of the 15 Romanian ministries answered our request. The analysis of the answers regretfully showed that the law was only partly implemented, in the best of cases. Several ministries simply had not operated any changes to their interior regulations, nor informed their personnel of the protection measures contained in Law no. 571/2004. Others had simply quoted formally the law in the preamble or first articles of the Interior Order Regulations, without actually changing the contents of these documents. As few as five ministries had actually operated amendments to the regulations and introduced new legal provisions to meet the requirements of Law no.571/2004, although only one – the Ministry of European Integration – had done so before the official deadline. More importantly, however, no ministry had actually proceeded to the implementation of the law, by informing the employees about the provisions of the new regulations, mentioning the procedures meant to ensure the protection of whistleblowers and asking the subordinate units to adapt their own interior order regulations.

Apart from assessment activities, TI Romania has supported the implementation of whistleblower protection measures through its Advocacy and Legal Advice Centre (ALAC), mandated to offer legal assistance and counseling to victims and witnesses of acts of corruption, concerning the administrative and legal procedures of complaint. Since 2005 the

Centre has set as a priority granting assistance to whistleblowers who notify breaches of law in good faith.

The activity of the ALAC is subject to a set of rules which limit strictly its engagement with clients. Thus, the Centre keeps and monitors only the intimations regarding exclusively acts of corruption or with a high potential of corruption in the public sector. It takes notice of the evidence presented, advises the petitioners, sends the cases to the competent authorities and monitors their solutioning, draws up periodical reports, and makes public the cases monitored. However, the ALAC does not grant legal assistance and counseling to the cases being judged in courts and cannot decide, instead of the criminal investigators or prosecutors, on the existence or non-existence of the acts of corruption, or on any other violation of the laws. The Center does not mount campaigns against individuals or institutions. Also, the Center is not entitled to represent its clients in court and does not draw up procedural documents on its clients' behalf. Moreover, it does not perform criminal inquiries or expert surveys. However, for clients who meet the legal requirements to be considered whistleblowers, the Centre applies a slightly different procedure, namely it issues a document which certifies that the respective person has notified an issue of public interest. This document can subsequently be used by the ALAC client in front of a disciplinary commission or/and a court of law to prove his/her status as whistleblower and therefore benefit from the specific protection measures.

Since 2005 the number of whistleblowers who visited the Centre and were willing to continue the procedures, by offering evidence in support of their petitions, has increased (29 in 2005, 11 in 2006 and 18 in 2007, compared to 2 in 2003 and 3 in 2004). The majority of the petitions submitted to the Center are made by people who have suffered directly from the abuse or disrespect or the laws or rules of conduct. They are forced to choose between their fear of retaliation and the need to solve a pressing personal problem. In 2005 the Centre had obtained permission to use publicly two successful cases of whistleblowers, which were repeatedly presented in the public awareness campaign run that year by TI Romania, convincingly demonstrating the existence of successful precedents and thus boosting the credibility of the new instrument among public sector employees. In the following years more cases of success followed, some of which are presently used in a new advocacy campaign centered on the issue of whistleblowing.

... In Romania whistleblower protection measures were relatively easy to introduce, principally owing to a remarkably favourable political context, both inside the country and internationally. The advocacy strategy adopted by TI Romania relied heavily on these contextual advantages, linking the measure tightly to Romania's calendar of measures for EU accession and the harmonization to international anticorruption conventions, especially the United Nations Convention against Corruption. Reliance on favourable international pressures, coupled with a direct and sustained dialogue with decision-makers proved to be a profitable advocacy strategy, since the law on whistleblower protection was adopted by the Parliament with almost no modifications less than seven months after TI Romania first presented it to experts in the Ministry of Justice. However, the high hopes generated by this very promising start were not confirmed during policy implementation. Today whistleblower protection measures are virtually unknown to potential beneficiaries as well as receptors of public disclosures. The lack of appropriate institutional structures charged with overseeing implementation, as well as the absence of sanctions for non-compliance are the main causes which explain the present regrettable situation. More importantly, however, the evolution of whistleblower protection policy in Romania confirms the lack of genuine domestic political will to fight corruption. It demonstrates that although the establishment of an appropriate legal framework is certainly a crucial gain, it is only the first step in building an effective and sustainable anticorruption effort (Alistar, V. and Nastase, A. 2008, 'The Protection of Whistleblowers in Romania', Transparency International Romania, The Network of Institutes and Schools of Public Administration in Central and Eastern Europe (NISPAcee) website, pp. 2, 8-10, 11-12

http://www.nispa.sk/_portal/files/conferences/2008/papers/200805121330420.NISPAcee_conference_paper_Alistar_and_Nastase_TI_Romania.doc – Accessed 25 September 2009 – Attachment 9).

The European Commission progress report dated 22 July 2009 cited earlier calls for the implementation and awareness of available whistleblower protection legislation and policies within institutions to be strengthened, particularly with regard to the confidentiality of whistleblowers:

In terms of sanctioning of civil servants, data collected by the National Agency of Civil Servants reveals that during 2008 Disciplinary Commissions solved 837 complaints, imposing 375 sanctions. The majority of these sanctions were written warnings, but did include 38 dismissals. Forty eight cases were also referred for criminal investigation. Surprisingly few of the complaints were made by members of the public (just 15%) and only 9 were made by whistleblowers. Most of the complaints are made by the institutions management or by the head of the institution. These statistics are revealing of more general trends. Prosecutors receive surprisingly few notifications concerning corruption from internal control and audit bodies of public institutions and in some cases it would appear the independence of the control bodies and the infrequency, predictability and limited focus of controls is problematic. Prosecutors also report receiving surprisingly few notifications from the Court of Accounts. Practical implementation and awareness of whistleblower policies (especially on their confidentiality) within institutions needs to be strengthened (European Commission 2009, ‘Supporting Document Accompanying the Report from the Commission to the European Parliament and the Council on Progress in Romania Under the Co-operation and Verification Mechanism’, European Commission website, 22 July, p. 14 http://ec.europa.eu/dgs/secretariat_general/cvm/docs/sec_2009_1073_en.pdf – Accessed 24 September 2009 – Attachment 3).

In addition, the US Department of State human rights report referred to above claims that “[a]ccording to the European Commission, the system to allow individuals to report suspected cases of corruption was neither accessible nor comprehensive, and implementation of rules to protect the confidentiality of whistle blowers was deficient” (US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – Romania*, February, Introduction, Section 3 – Attachment 6).

An article from the Transparency International Estonia website dated 1 January 2009 describes a project entitled ‘Enhancing Whistleblower Protection in the European Union’, which will be implemented in Romania, among other EU Member States. The project seeks to enhance the protection available to whistleblowers by assessing the whistleblower protection legislation of eight Member States, in order to develop and promote best practices:

The TI Enhancing Whistleblower Protection in the European Union (EWP) Project is an awareness and dissemination activity as set out in the call for proposals. There are also strong analytical and monitoring aspects to the project.

The 12-month project will contribute to enhancing the protection of victims of crime, specifically whistleblowers, by analyzing national whistleblower protection legislation in eight EU Member States and developing and promoting best practices.

A total of nine Transparency International (TI) partners will participate in the EWP Project. Eight TI Chapters in EU Member States (Bulgaria, Czech Republic, Estonia, Ireland, Italy, Latvia, **Romania** and Slovakia) will implement the project in their respective countries. The TI Secretariat will coordinate the project from Berlin, Germany.

The main outputs of the EWP Project will be: a) a set of comparable analyses on national whistleblower protection legislation and its implementation in eight EU Member States, b) an expert roundtable meeting on best practices in whistleblower protection c) a report on best practices in whistleblower protection applicable to EU Member States, and d) a campaign to actively promote the findings to relevant stakeholders

The main event of the EWP Project will be the expert roundtable meeting planned to take place in Month 6 in Prague, Czech Republic. The meeting will be a forum for project partners to discuss and refine with relevant experts a set of best practices in whistleblower protection in EU Member States. The project will also take advantage of opportunities to participate in relevant events in the EU to further promote the report on best practices ('Enhancing Whistleblower Protection' 2009, Transparency International Estonia website, 1 January <http://www.transparency.ee/?s=804> – Accessed 25 September 2009 – Attachment 10).

Information provided about the Enhancing Whistleblower Protection Project on Transparency International Romania's website indicates that a hotline will be established for the dissemination of information and individualised legal advice to whistleblowers. The key expected outcomes of the project include "[c]omprehensive information on whistleblower protection legislation and its implementation will be available for each one of the eight EU Member States; [a]pplicable best practice for whistleblower protection will have been promoted to a wide range of key actors; [and] [w]histleblowers/ potential whistleblowers will have been provided with specialise guidance and practical options for blowing the whistle in their specific countries" ('Blowing the Whistle Harder: Enhancing the Whistleblower Protection Project' (undated), Transparency International Romania website http://www.transparency.org.ro/proiecte/proiecte_in_desfasurare/proiect_8/index_en.html – Accessed 30 September 2009 – Attachment 11).

8. Are Romanian citizens able to enter and reside in other countries in the EU?

The European Union currently has 27 Member States, including Bulgaria and Romania, who joined the European Union on 1 January 2007. An article from the European Commission website states that "every EU citizen is entitled to travel freely around the Member States of the European Union and to settle anywhere within the EU. This right is in force in every EU Member State":

Free movement of persons between the Member States of the EU is one of the basic aims of the Union. What has become true for capital, goods and services has to be a reality for people too. Originally, a right of free movement across the EU was envisaged only for the working population, as a single market could not be achieved while limitations to workforce mobility persisted. Since then, however, as the social and human dimension of the European area has increased, notably in the form of introduction of citizenship of the Union, the right to free movement has been extended to all categories of citizens, be they economically active or not, and to their family ('Free movement within the EU – a fundamental right' 2009, European Commission Freedom, Security and Justice website, March http://ec.europa.eu/justice_home/fsj/freetravel/fsj_freetravel_intro_en.htm – Accessed 25 September 2009 – Attachment 12).

The Europa website provides a summary of the European Parliament and Council Directive 2004/38/EC of 29 April 2004, which governs the right of citizens of the European Union to move and reside freely within the territory of the Member States, including the right of

permanent residence. The Directive was adopted in order to simplify the complex body of legislation which had previously addressed the right to freedom of movement within the EU:

Right to move and right of residence for up to three months

All Union citizens have the right to enter another Member State by virtue of having an identity card or valid passport. Under no circumstances can an entry or exit visa be required. Where the citizens concerned do not have travel documents, the host Member State must afford them every facility in obtaining the requisite documents or having them sent.

Family members who do not have the nationality of a Member State enjoy the same rights as the citizen who they have accompanied. They may be subject to a short-stay visa requirement under Regulation (EC) No 539/2001. Residence permits will be deemed equivalent to short-stay visas.

For stays of less than three months, the only requirement on Union citizens is that they possess a valid identity document or passport. The host Member State may require the persons concerned to register their presence in the country within a reasonable and non-discriminatory period of time.

Right of residence for more than six months

The right of residence for more than six months remains subject to certain conditions. Applicants must:

- either be engaged in economic activity (on an employed or self-employed basis);
- or have sufficient resources and sickness insurance to ensure that they do not become a burden on the social services of the host Member State during their stay. The Member States may not specify a minimum amount which they deem sufficient, but they must take account of personal circumstances;
- or be following vocational training as a student and have sufficient resources and sickness insurance to ensure that they do not become a burden on the social services of the host Member State during their stay;
- or be a family member of a Union citizen who falls into one of the above categories.

Residence permits are abolished for Union citizens. However, Member States may require them to register with the competent authorities within a period of not less than three months as from the date of arrival. Proof of registration will be issued immediately on presentation of:

- an identity card or valid passport;
- proof that the above conditions are complied with (see Article 9 of the Directive on the proof required for each category of citizen). Union citizens engaged in training must show, by means of a statement or any other means, that they have sufficient resources for themselves and for the members of their families to ensure that they do not become a burden on the social services of the host Member State. This will be sufficient to prove that they comply with the resources condition.

Family members of Union citizens who are not nationals of a Member State must apply for a residence permit for family members of Union citizens. These permits are valid for at least five years from their date of issue.

The death of the Union citizen, his or her departure from the host Member State, divorce, annulment of marriage or termination of partnership does not affect the right of family

members who are not nationals of a Member State to continue residing in the Member State in question, subject to certain conditions.

Right of permanent residence

Union citizens acquire the right of permanent residence in the host Member State after a five-year period of uninterrupted legal residence, provided that an expulsion decision has not been enforced against them. This right of permanent residence is no longer subject to any conditions. The same rule applies to family members who are not nationals of a Member State and who have lived with a Union citizen for five years. The right of permanent residence is lost only in the event of more than two successive years' absence from the host Member State.

Union citizens who so request receive a document certifying their right to permanent residence. The Member States issue to third country family members permanent residence permits which are valid indefinitely and renewable automatically every ten years no later than six months after the application is made. Citizens can use any form of evidence generally accepted in the host Member State to prove that they have been continuously resident.

Common provisions on the right of residence and right of permanent residence

Union citizens qualifying for the right of residence or the right of permanent residence and the members of their family also benefit from equal treatment with host-country nationals in the areas covered by the Treaty. However, the host Member State is not obliged to grant entitlement to social security during the first three months of residence to persons other than employed or self-employed workers and the members of their family. Equally, host Member States are not required, prior to the acquisition of the permanent right of residence, to grant maintenance aid for studies, including for vocational training, in the form of grants or loans to these same persons. Family members, irrespective of their nationality, will be entitled to engage in economic activity on an employed or self-employed basis ('Right of Union citizens and their family members to move and reside freely within the territory of the Member States' 2007, Europa website, 25 June

http://europa.eu/legislation_summaries/education_training_youth/lifelong_learning/133152_en.htm – Accessed 28 September 2009 – Attachment 13).

9. Are there any restrictions on this right?

Restrictions for citizens of all Member States

The summary of the European Parliament and Council Directive 2004/38/EC of 29 April 2004 as referred to above also outlines restrictions on the aforementioned rights of entry and residence on the grounds of security, public policy and health:

Union citizens or members of their family may be expelled from the host Member State on grounds of public policy, public security or public health. Under no circumstances may an expulsion decision be taken on economic grounds. Measures affecting freedom of movement and residence must comply with the proportionality principle and be based exclusively on the personal conduct of the individual concerned; previous criminal convictions do not automatically justify such measures.

Such conduct must represent a sufficiently serious and present threat which affects the fundamental interests of the state. The mere fact that the entry documents used by the individual concerned have expired does not constitute grounds for expulsion.

In any event, before taking an expulsion decision, the Member State must assess a number of factors such as the period for which the individual concerned has been resident, his or her age, degree of integration and family situation in the host Member State and links with the country of origin. Only in exceptional circumstances, for overriding considerations of public security, can expulsion orders be served on a Union citizen if he has resided in the host country for ten years or if he is a minor.

The person concerned by a decision refusing leave to enter or reside in a Member State must be notified of that decision. The grounds for the decision must be given and the person concerned must be informed of the appeal procedures available to them. Except in emergencies, the subject of such decisions must be allowed at least one month in which to leave the Member State.

Lifelong exclusion orders cannot be issued under any circumstances. Persons concerned by exclusion orders can apply for the situation to be reviewed after a maximum of three years. The Directive also makes provision for a series of procedural guarantees. In particular the individuals concerned have access to judicial review and, where appropriate, to administrative review in the host Member State.

Final provisions

Member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by this Directive in the case of abuse of rights or fraud, such as marriages of convenience.

This Directive does not prevent the application of national legislation or administrative arrangements providing for more favourable treatment ('Right of Union citizens and their family members to move and reside freely within the territory of the Member States' 2007, Europa website, 25 June

http://europa.eu/legislation_summaries/education_training_youth/lifelong_learning/133152_en.htm – Accessed 28 September 2009 – Attachment 13).

Restrictions for Romanian citizens

A number of restrictions on the rights of entry and residence in EU Member States apply specifically to Romanian and Bulgarian citizens, due to transitional arrangements which are provided in the Accession Treaty relevant to these countries, in force for a specified period of time following their accession to the EU. These arrangements allow some of the 25 Member States (excluding Bulgaria and Romania) to restrict the free movement of Romanian and Bulgarian workers, that is, “any national of Bulgaria or Romania who wants to sign an employment contract with an employer in one of the current Member States or who wants to look for employment in one of the current Member States”. The restrictions are not applicable to citizens who wish to reside in one of the current Member States for study purposes or self-employment; however, exceptions apply to self-employed persons who provide certain services, such as those in the construction sector who wish to work and reside in Germany or Austria. The restrictions for workers of Romanian and Bulgarian origin apply in stages, which are outlined on the Europa website as follows:

For the first two years following the accession of Bulgaria and Romania, access to the labour markets of the current Member States will depend on national measures and policies, as well as bilateral agreements they may have with the new Member States. There is no requirement to notify the Commission formally of the measures to be taken.

At the end of the first two years – i.e. towards the end of 2008 – the Commission will draft a report, which will be the basis for a review by the Council of Ministers of the functioning of the transitional arrangements. In addition to the Council's review, Member States must notify the Commission as to their intention for the next period of up to three years – either to continue with national measures, or to allow free movement of workers.

There should therefore be free movement of workers after 5 years, which is by 1 January 2012. However, the possibility does exist for a current Member State to ask the Commission for authorisation to continue to apply national measures for a further two years, but only if it is experiencing serious disturbances on its labour market. This requirement must be objectively justified.

From January 2014 – seven years after accession – there will be complete freedom of movement for workers from new Member States.

... Will Bulgarian and Romanian nationals be discriminated against in the labour market?

Discrimination on the grounds of nationality is against Community law. Once a worker has complied with any national measures that may be in place, he or she must be treated on the same basis as any domestic worker. Even when a Member State applies national measures, it must give workers from Bulgaria and Romania priority over workers from third countries. Some jobs in the public sector can be restricted to nationals of the host Member State.

Will Bulgarian and Romanian nationals already working in a current Member State be affected?

A Bulgarian or Romanian national legally working in a current Member State on 1 January 2007 and having a work permit or authorisation for 12 months or longer will continue to have access to the labour market of that Member State. He or she will not have automatic access to the labour markets of the other current Member States.

A Bulgarian or Romanian national who moves to a current Member State and gains legal permission to work there for 12 months or longer will have the same rights. But should he or she voluntarily leave that Member State, the right of access will be lost until the end of the transitional period.

What is the situation with regard to family members?

Family members of a Bulgarian or Romanian worker who has been legally admitted to the labour market of a current Member State for 12 months or more, and who are resident with the worker before accession, will also have access to the labour market of that Member State. If the family joins the worker after the date of accession, they will have access to the labour market of that state once they have been resident for 18 months or from the third year after accession (i.e. 2010), whichever is earlier. "Family members" means the spouse of the worker, their children under the age of 21, or dependent.

Can Member States impose tighter restrictions from 1 January 2007 than were in place before?

No, the so-called 'standstill clause' states that current Member States cannot make access to their labour market more restrictive than it was on the date of signature of the accession treaty, 25 April 2005.

Will workers from current Member States be able to have free movement to work in Bulgaria and Romania?

There will be no automatic restrictions on the right of nationals of current Member States to move to work in Bulgaria and Romania. However, Bulgaria and Romania may choose to

impose equivalent restrictions on the nationals of Member States that have themselves imposed restrictions.

When will the Commission have information on the positions of the various Member States?

The Commission cannot legally oblige Member States to indicate the national measures they will put in place for the first two years of the transitional period. However, in the interests of transparency, the Commission has asked Member States to provide this information as soon as possible. Once known, details will be available on the Commission's Job Mobility Portal: <http://ec.europa.eu/eures>

What improvements will workers from Bulgaria and Romania already working in the EU see in their situation after 1 January 2007?

Currently, Bulgarian and Romanian workers have only enjoyed equal treatment regarding working conditions, remuneration and dismissal as well as co-ordination of social security when moving within the current Member States. After accession they will benefit from Community rules on the recognition of qualifications and co-ordination of social security with regard to insurance periods acquired in either Bulgaria or Romania.

Are the rules on coordination of social security subject to transitional arrangements?

Once a worker is in a Member State, whether under a transitional arrangement or after being granted free access, he or she will have the full rights applicable under the rules governing the co-ordination of social security (Regulation 1408/71). The exact nature of entitlements depends on the scheme in the host country and the home country, but in general, these rights can be characterised as:

- The exportation of pension rights and other cash benefits acquired by a worker in his or her home Member State.
- The aggregation (adding together) of social security contributions earned in different Member States to ensure that the worker always has appropriate cover and can immediately benefit from insurance in the new country. The aim of these dispositions is that no-one should lose his or her social security protection by having changed Member State.
- Equality of treatment, in particular access by the worker's family to the same family allowances that the family of a national of the particular Member State would have ('Free movement of workers after accession of Bulgaria and Romania: Frequently Asked Questions' 2006, Europa website, 21 December <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/06/513> – Accessed 28 September 2009 – Attachment 14).

The following article outlines the restrictions imposed by various countries on Romanian and Bulgarian workers during the period from 1 January 2007 – 31 December 2008:

The Czech Republic, Estonia, Latvia, Lithuania, Poland, Slovakia, and Sweden decided not to apply any restrictions on access to their labour markets by Bulgarian and Romanian workers. Finland, Cyprus and Slovenia do not apply any ex-ante restrictions on access to their labour markets but Bulgarian and Romanian workers must register subsequently.

The remaining 15 EU-25 Member States informed the Commission that they would for the time being, maintain their work permit system for Bulgarian and Romanian workers, albeit in some cases with some modifications.

Denmark exempts workers from a work permit requirement for an employment that is covered by a collective agreement.

France applies a simplified procedure for 150 occupations where a work permit is issued without considering the job situation.

Luxembourg has introduced simplified procedures for work in agriculture, viticulture, the hotel and catering sector and for people with specific qualifications in the financial sector.

Italy does not require a work permit for employment in certain sectors (agriculture, hotel and tourism, domestic work, care services, constructions, engineering, managerial and highly skilled work, seasonal work).

In Hungary, no work permit is needed for skilled work requiring professional qualifications; for certain categories of unskilled work, work permits are issued without a labour market review.

Belgium has introduced an accelerated procedure to issue work permits within 5 days for jobs in professions for which there is a labour shortage.

In Germany, engineers in certain fields (aeronautical, mechanical, electrical, vehicle construction) need a work permit but are exempt from a labour market test.

In the Netherlands, a work permit will be issued whenever there are no workers available in the Netherlands or other EU Member States and the employer concerned can offer proper working conditions and accommodation. Temporary exemptions may be granted for sectors in which there is a labour shortage.

Malta grants work permits for positions that require qualified and/or experienced workers and for those occupations for which there is a shortage of workers.

In Greece and Ireland, a work permit will be issued if an employer cannot fill the vacant post with another EU-25 citizen.

In the United Kingdom, the employer must apply for a work permit (except for certain categories of employment) and the worker must apply for an "Accession worker card". Low-skilled workers are restricted to existing quota schemes in the agricultural and food processing sectors, skilled workers can work if they qualify for a work permit, or under Highly Skilled Migrant Programme.

Spain, Portugal and Austria also maintained their traditional work permit systems: in Spain, the issuing of a work permit is directly linked to obtaining a job offer and approval of an application by the employer. Legislation in Portugal provides for a quota system, and Austria allows issuing of work permits after a labour market test for 65 professions for which there is a shortage of labour.

In addition to maintaining a work permit requirement, Austria and Germany also apply restrictions on the posting of workers in certain sectors.

Neither Bulgaria nor Romania applies reciprocal measures vis-à-vis EU-25 Member States which are applying restrictions on Bulgarian and Romanian workers.

The article also states that if any of the EU Member States wishes to maintain restrictions on Romanian or Bulgarian workers following this period, such restrictions will subsequently apply from 1 January 2009 to 31 December 2011. Any proposed restrictions after this period

can be applied for a further two years; however, they must be based on evidence of serious disruption by labour flows to a country's labour market ('Commission report on transitional arrangements regarding free movement of workers' 2008, Labour Web website, 18 November, pp. 3-5

<http://www.lex.unict.it/eurolabor/documentazione/comunicati/2008/rapid181108.pdf> – Accessed 28 September 2009 – Attachment 15).

An article from the *BBC News* dated 17 April 2009 explains that 14 out of the 25 Member States who joined the EU prior to 2007 have lifted restrictions on Bulgarian and Romanian workers. These countries include Finland, Sweden, Cyprus, Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Poland, Portugal, Slovakia, Slovenia, and Spain ('EU free movement of labour map' 2009, *BBC News* 17 April

<http://news.bbc.co.uk/2/hi/europe/3513889.stm> - Accessed 1 October 2009 – Attachment 16).

An article from the European Commission Employment, Social Affairs and Equal Opportunities website dated 8 January 2009 similarly claims that 14 EU Member States have removed restrictions imposed on Bulgarian and Romanian workers, while Denmark will lift restrictions for these workers from 1 May 2009. The article states that “[a]ll restrictions for workers from Bulgaria and Romania must be lifted by 31 December 2013 at the very latest when full free movement of workers will apply across the EU-27”:

Greece, Spain, Hungary and Portugal have lifted restrictions on access to their labour markets for Bulgarian and Romanian workers, the European Commission announced on 8 January 2009.

The four countries join ten other EU Member States which had already opened their labour markets for workers from Bulgaria and Romania. Restrictions remain in eleven Member States.

The first phase of the transitional arrangements on free movement for Bulgarian and Romanian workers ended on 31 December 2008. Until then, Bulgarian and Romanian workers were free to work in 10 Member States while 15 Member States imposed restrictions on free movement (usually requiring a work permit). EU-25 countries that wanted to continue to apply restrictions during the second phase of the transitional arrangements had to notify the Commission before 1 January 2009.

Eleven EU-25 Member States have notified the Commission of their decision to continue to apply national law on labour market access after 1 January 2009. Four Member States (Greece, Spain, Hungary, and Portugal) that previously restricted access of Bulgarian and Romanian workers to their labour markets have decided to lift these and now apply European law on free movement of workers. This means that workers from Bulgaria and Romania can now move freely to 14 Member States to take up employment there. Denmark, which currently imposes some restrictions, has also announced that it will stop applying restrictions for Bulgarian and Romanian workers from 1 May 2009, when it will also end all restrictions for workers from the EU-8 Member States.

All Member States that continue to restrict labour market access by applying national law can end these restrictions at any time during the second phase. In principle, full free movement of workers should apply after the end of the second phase (31 December 2011). Member States can only maintain restrictions thereafter if there is a serious disturbance (or threat thereof) to the labour market ('Four more countries lift labour market restrictions for Bulgarian and Romanian workers' 2009, European Commission Employment, Social Affairs and Equal Opportunities website, 8 January

10. Are there any EU countries that are particularly accessible to other EU citizens?

The European Union currently has 27 Member States. Prior to 2004, however, the EU consisted of 15 Member States (referred to as the EU 15), which included Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and the United Kingdom. Citizens of EU 15 countries are granted full freedom of movement to other Member States.

In 2004, the EU accepted 10 new Member States – Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. The EU 15 have imposed restrictions on workers from countries known as the EU 8 (those who joined in 2004 except for Cyprus and Malta, who are not subject to restrictions from any Member State); as well as Bulgaria and Romania, who joined the EU in 2007.

The *BBC News* article dated 17 April 2009 cited above outlines the current restrictions imposed by the EU 15 on those countries that joined the EU in 2004, as well on as those that joined in 2007. It is noted that five of the EU 15 countries have retained ‘open doors’ for all new Member States that joined in either 2004 or 2007, namely Finland, Sweden, Greece, Portugal, and Spain:

LABOUR MARKET ACCESS

Subject to restrictions: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia (all 2004); Bulgaria, Romania (2007)

Open doors for 2004 entrants: Finland, France, Greece, Ireland, Portugal, Spain, Sweden, UK

Open doors for 2007 entrants: Finland, Sweden, Cyprus, Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Poland, Portugal, Slovakia, Slovenia, Spain

In May 2004 eight other former communist states joined the EU - and their workers still face barriers in some European countries.

Some of the countries which imposed no curbs on workers from those eight countries - or lifted them in May 2006 - imposed curbs on Bulgarians and Romanians.

But free movement of workers is a fundamental right in the EU. So the curbs can be maintained for a maximum of seven years - until May 2011 in the case of workers from the eight countries that joined in 2004, and until 2014 in the case of workers from Bulgaria and Romania.

Most of the countries which threw open their doors to Bulgarian and Romanian workers joined the EU in 2004.

...Austria

Workers from the 10 former communist states have to apply for work permits. Like Germany, Austria justifies the restrictions by pointing to its problems with unemployment and the fact

that it is geographically close to the new members. There are also curbs on employers posting workers to Austria in certain sectors.

Belgium

Belgium imposed restrictions on the eight former communist states which joined the EU in 2004, but it plans to lift them in May 2009.

It has already made it easier to get work permits in areas of the economy where jobs are hard to fill. For example, the Brussels region asked for privileged treatment for nurses, plumbers, electricians, car mechanics, builders, architects, accountants, engineers and IT workers.

Restrictions were also imposed on Bulgaria and Romania, and at least until 2011 their workers will still have to get work permits.

Denmark

Denmark allows workers from the eight states that joined in 2004 to look for a job for six months. If they find one, they can have residence and work permits. The restrictions also apply to Bulgaria and Romania.

A work permit is issued on condition that the worker has a residence permit, that the work is full-time and complies with normal labour agreements and standards.

Denmark plans to lift its restrictions on workers from the new member states in May 2009.

Finland

Finland lifted all restrictions on workers from the eight 2004 entrants on 1 May 2006. Previously, citizens of the new member states could get a job without a work permit only if the employment office decided there was no-one else available on the Finnish labour market.

It has imposed no restrictions on workers from Bulgaria and Romania.

France

France imposed restrictions on workers from Bulgaria and Romania, as well as the eight former communist countries which joined the EU in 2004.

But on 1 July 2008 - a year earlier than planned - France opened its labour market to workers from the 2004 accession countries. That move coincided with France assuming the EU's six-month rotating presidency.

Workers from Bulgaria and Romania are eligible for fast-track work permits if they apply for any of a list of 62 jobs where recruitment is a problem. These include restaurant services, industrial maintenance, construction, public works and health.

Germany

Like Austria, Germany has insisted on continuing restrictions on workers from the former communist states, beyond its eastern borders. Workers from these countries will have to apply for work permits before 2011. However, Germany issued 500,000 of these permits between 2004 and 2006.

"In practice Germany has given as many people work as other big countries," EU Employment Commissioner Vladimir Spidla said in May 2006. Germany has also imposed

restrictions on workers from Bulgaria and Romania, but it has pledged to ease access for highly skilled workers from the new member states.

Greece

Greece dropped all restrictions on 2004 entrants, as of 1 May 2006. It introduced some restrictions on workers from Bulgaria and Romania, but lifted them in January 2009.

Ireland

The Republic of Ireland was one of three countries which opened up its labour markets to all new member states immediately in 2004. It did, however, introduce new rules whereby immigrants from all EU countries - not just the new members - would be ineligible for benefits for two years. Immigrants from the UK are the only exception.

However, Ireland introduced a work permit scheme for workers from Bulgaria and Romania, after it experienced an influx of an estimated 200,000 workers from Central Europe between 2004 and 2006.

Italy

Italy initially imposed restrictions on 2004 entrants, including a special entry quota, but has now dropped them all.

It introduced restrictions on some categories of workers from Bulgaria and Romania. But work permits are not required in agriculture, hotel and tourism, domestic work, care services, construction, engineering, managerial and highly skilled work.

Luxembourg

In November 2007 Luxembourg lifted restrictions for workers from the 2004 accession countries.

Luxembourg simplified work permit procedures for Bulgarian and Romanian workers in agriculture, hotel and catering and certain areas of finance.

The Netherlands

The Dutch government lifted all restrictions from 1 May 2007 for workers from the 2004 accession countries.

For workers from Bulgaria and Romania, a work permit will be issued whenever there are no suitable workers available in the Netherlands or other EU member states and the employer can fulfil the norms for working conditions and accommodation.

Portugal

Portugal dropped all restrictions on workers from the 2004 entrants on 1 May 2006. Between 2004 and 2006 it had a 6,500 annual limit on immigrant workers of all nationalities.

Bulgarians and Romanians had to apply for work permits until January 2009, when Portugal dropped that requirement.

Spain

Spain dropped all restrictions on workers from the 2004 entrants on 1 May 2006.

Spain operated a work permit system for workers from Bulgaria and Romania for the first two years after their accession, but dropped that requirement in January 2009. Some 400,000 Romanians are already working legally in the country.

Sweden

Sweden was one of the three countries, along with the UK and Ireland, which chose to apply no restrictions to workers from the new EU member states. It has taken the same liberal line with regard to workers from Bulgaria and Romania.

UK

The UK was one of the three countries, along with Ireland and Sweden, to place no restrictions on workers from the 2004 entrants. However, workers have to register and only become eligible for benefits such as Jobseeker's Allowance and income support after working continuously in the UK for at least a year.

After an unexpectedly large influx of workers from Central Europe - an estimated 600,000 in two years - the UK announced that it would impose restrictions on workers from Bulgaria and Romania. Up to 20,000 are allowed to take low-skilled jobs in agriculture or food processing, high-skilled workers are able to apply for work permits to perform a skilled job, and students are able to work part-time. Self-employed people from Bulgaria and Romania are already allowed to work in the UK, and this will continue ('EU free movement of labour map' 2009, *BBC News* 17 April <http://news.bbc.co.uk/2/hi/europe/3513889.stm> - Accessed 1 October 2009 – Attachment 16).

The article from the Labour Web website dated 18 November 2008 cited above also outlines the restrictions imposed on workers from 8 of the 10 Member States that joined in 2004 (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia):

As from accession on 1 May 2004, 3 of the 15 Member States immediately opened their labour markets: Sweden and Ireland had decided not to apply any restrictions on access to their labour markets and the UK had decided not to apply any ex-ante restrictions but adopted a Worker's Registration Scheme.

After the Commission had presented its report on the functioning of the first two years of the transitional arrangements on 8 February 2006 and Council had reviewed the functioning of the transitional arrangements, Greece, Spain, Portugal and Finland decided to open their labour markets and apply EC law on free movement of workers from 1 May 2006. Italy followed suit from 27 July 2006. The Netherlands lifted all restrictions from 1 May 2007, Luxembourg from 1 November 2007 and France from 1 July 2008.

Four Member States still apply restrictions but they all have reduced restrictions in some sectors/professions or simplified procedures:

Denmark exempts workers from a work permit requirement for an employment that is covered by a collective agreement.

Belgium has introduced an accelerated procedure of issuing work permits within 5 days for jobs in professions for which there is a labour shortage.

In Germany, engineers of certain fields (aeronautical, mechanical, electrical, vehicle construction) need a work permit but are exempt from a labour market test.

Austria allows issuing of work permits after a labour market test for 65 professions for which there is a shortage of labour.

Hungary applies reciprocal measures, restricting access to its labour market for workers from those Member States that restrict access to Hungarian workers. However, skilled workers are exempt from a work permit requirement and a work permit is issued without a labour market review for certain categories of unskilled workers ('Commission report on transitional arrangements regarding free movement of workers' 2008, Labour Web website, 18 November, p. 5

<http://www.lex.unict.it/eurolabor/documentazione/comunicati/2008/rapid181108.pdf> – Accessed 28 September 2009 – Attachment 15).

It may also be relevant to note that 22 EU Member States are signatories to the Schengen Convention, which has abolished internal border controls for people traveling between these countries. The Schengen area refers to the external borders of these 22 countries, within which travellers can move freely without being subject to border checks, for up to three months within a six-month period:

The right to free movement was given a boost in 1985 when Germany, France and the Benelux countries (Belgium, the Netherlands and Luxembourg) signed an intergovernmental agreement on gradually abolishing internal border checks, in the small Luxembourg border town of Schengen. The Schengen Agreement was followed in 1990 by the Schengen Convention, which finally came into force in 1995.

The Schengen Convention abolished controls at the internal borders between the signatories, harmonised controls at the external frontiers of the "Schengen area" and introduced a common policy on short-stay visas for third-country nationals and other accompanying measures like police and judicial cooperation. The Schengen signatories agreed that each country could reintroduce controls at their shared borders only temporarily and in specific, clearly defined circumstances.

The Schengen provisions were not intended to regulate the right to long-term residence and work, neither for EU citizens nor for third-country nationals.

A protocol attached to the Treaty of Amsterdam incorporated the developments made in the intergovernmental framework ("Schengen acquis") into the legal and institutional framework of the EU. The Schengen acquis now forms part of the EU legislation and is divided between the first and third pillar instruments, with border and visa policy falling under the "first pillar" and, hence, under the scrutiny of the European Commission and (with some specific conditions) of the Court of Justice of the European Communities and also involving the European Parliament.

The harmonised entry conditions for third-country nationals and rules and operational instructions for carrying out checks at the EU's external borders are defined in the Schengen Borders Code that replaced earlier provisions of the Schengen Convention and the common manual on external borders. The key documents regulating the issuing of Schengen visas are the Common Consular Instructions.

The Schengen cooperation has made travel easier not only for EU citizens, but also for non-EU nationals. Since the Schengen area was established, all travellers who enter the area lawfully can travel freely within it without being submitted to border checks (for up to three months within a six-month period). Non-EU travellers who would normally need 22 visas to visit all the Schengen Member States can now do this with a single visa. A residence permit issued by a Schengen State replaces the short-term visa normally required for nationals of countries subject to a visa requirement (see the section on borders for details).

3. Which countries are now in the Schengen area?

Since December 2007, 22 EU Member States are in the Schengen area without internal border control. These are Belgium, the Czech Republic, Denmark, Estonia, Germany, Greece, Spain, France, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Austria, Poland, Portugal, Finland, Slovakia, Slovenia and Sweden. In addition, three associated countries currently form part of the Schengen area: Norway, Iceland and Switzerland (the latter since December 2008).

As mentioned earlier, Denmark is in the Schengen area without internal border control. For certain provisions, however, it can choose whether or not to apply a new decision taken to build upon the Schengen acquis (see Protocol on the position of Denmark attached to the Treaty of Amsterdam for details). Ireland and the United Kingdom carry out checks and surveillance at their borders with other EU Member States, but both these Member States have requested to participate in parts of the Schengen acquis, mainly relating to security (cooperation between police forces and the judiciary). An exhaustive list for the United Kingdom can be found in Council Decision 2000/365/EC of 29 May 2000 (with the dates of entry into force specified in Council Decision 2004/926/EC of 22 December 2004); a similar list for Ireland is available in Council Decision 2002/192/EC of 28 February 2002.

Three non-EU Member States, Norway, Iceland and Switzerland, fully apply the Schengen provisions on the basis of specific agreements (agreement with specific agreement Norway and Iceland. agreement with Switzerland). Bulgaria, Cyprus and Romania only partially apply the Schengen acquis at the moment and checks are therefore still carried out at the borders with these three Member States. The Schengen acquis applicable to these three countries is listed in their EU accession treaties.

An agreement on Liechtenstein's participation in the Schengen area was signed on 28 February 2008.

The precondition for association with the Schengen acquis by non-EU countries is an agreement on free movement of persons between those States and the EU (this is provided for by the Agreement on the European Economic Area in the cases of Iceland, Norway and Liechtenstein and by the Agreement on the free movement of persons in the case of Switzerland).

Member States that are not in the Schengen area (Ireland, the UK, Bulgaria, Romania and Cyprus) maintain border checks and may require non-EU nationals to have a separate entry visa issued by the non-Schengen country to which they are travelling. Under Directive 2004/38/EC, third-country members of the family of an EU citizen are exempted from the visa requirement when they accompany or join the EU citizen in a Member State other than that of the EU citizen's nationality, on condition that they have a residence card of a family member of a Union citizen (e.g. a Russian spouse of a German national residing in Belgium and holding a Belgian residence card does not need a visa to enter Bulgaria when they travel there together on holiday) ('Free movement within the EU – a fundamental right' 2009, European Commission Freedom, Security and Justice website, March http://ec.europa.eu/justice_home/fsj/freetravel/fsj_freetravel_intro_en.htm – Accessed 25 September 2009 – Attachment 12).

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Topic Specific Links

The Network of Institutes and Schools of Public Administration in Central and Eastern Europe (NISPAcee) <http://www.nispa.sk/>

Labour Web <http://www.lex.unict.it/eurolabor/>

Region Specific Links

Council of Europe Parliamentary Assembly <http://assembly.coe.int/>

European Commission <http://ec.europa.eu/>

Europa <http://europa.eu/>

Search Engines

Google <http://www.google.com.au/>

Databases:

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BACIS (DIAC Country Information database)

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