

Overall Score:

**86 - Strong**

Legal Framework Score:

**94 - Very Strong**

Actual Implementation Score:

**78 - Moderate**

Category I. Civil Society, Public Information and Media

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## I-1. <sup>84</sup> Civil Society Organizations

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### 1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES

NO

**Comments:**

This is a right guaranteed by the Constitution. There are also several laws related to the issue.

**References:**

General legal references: The Romanian Constitution, Article 40 provides for the right of assembly: Citizens may freely associate in political parties, trade unions and other types of association". This is the legal ground for non-profit organizations (NGOs) The same article, however, imposes certain limits: Paragraph 2 states that "parties or organizations which, by their goals or activity, militate against political plurality, against the principles of the state of law or against Romania's sovereignty, integrity or independence are unconstitutional". Paragraph 3 states that: "judges of the Constitutional Court, district attorneys, magistrates, active members of the army, policemen and other categories of civil servants mentioned by organic law cannot be members of political parties". It is obvious that the act of association is limited in the case of political parties only from a personal point of view ; the other restrictions are only related to the goal . The values mentioned therein are defended by the Constitution and in accordance with the constitutional provision described any party or organization, irrespective of its legal personality, becomes unconstitutional and therefore illegal the moment it attempts to or does infringe on them through the activity it carries out. Paragraph 4 stipulates that "secret associations are forbidden".

Special references: in Romania, associations and foundations, the most representatives nonprofit actors, are ruled by Law 246/18 July 2005, the framework law in this field, completed with the provisions of Government Ordinance No. 26/2000; Government Decision 1354/2005 for establish The College of Civic Society (HG nr. 1354 din 3 noiembrie 2005 pentru modificarea si completarea HG nr. 618/2005 privind constituirea colegiului pentru consultarea societatii civile);

**YES:** A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

**NO:** A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

**Comments:**

There are no obstacles.

**References:**

Law 246/July 18, 2005, Art. 46

**YES:** A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

**NO:** A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

**References:**

Law 246/2005

**YES:** A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

**NO:** A NO score is earned if no such public disclosure requirement exists.

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## 2. Are good governance/anti-corruption CSOs able to operate freely?

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

**Comments:**

Over the last year the government didn't raise barriers in the way of new-anti-corruption/good governance CSOs. Civil society organizations focused on promoting good governance or anti-corruption can freely organize without the government interventions.

**References:**

Law 246/2005, Art.2

**100:** CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

**75:**

**50:** CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

**25:**

**0:** Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

**References:**

See websites of:

Romanian Academic Society (SAR–Societatea Academica Romana), [www.sar.org.ro](http://www.sar.org.ro);

Open Society Foundation, [www.fsd.ro](http://www.fsd.ro);

Transparency International Romania, [www.transparency.org.ro](http://www.transparency.org.ro);

The Center of Internet Resources and Communications for NGO, [www.ong.ro](http://www.ong.ro) etc.

**100:** Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

**50:** Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

**0:** Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

**YES** | NO

**References:**

No CSOs were shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. Watchdog organizations would have covered such an occurrence.

**YES:** A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

**NO:** A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

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### 3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

**YES** | NO

**References:**

In the past year, no civil society activists working on corruption issues were imprisoned. Watchdog organizations and central media would have covered such an occurrence.

**YES:** A YES score is earned if there were no CSO activists imprisoned related to work covering corruption.

**NO:** A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the p

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

**References:**

In the past year, no civil society activists working on corruption issues were physically harmed. The local or central media would have covered such an occurrence.

**YES:** A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work.

**NO:** A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

**References:**

In the past year, no civil society activists working on corruption issues were killed. The central and international media would have covered such an occurrence.

**YES:** A YES score is earned if there were no documented cases of CSO activists being killed related to a corruption case in the specific study period.

**NO:** A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

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#### 4. Can citizens organize into trade unions?

100

4a. In law, citizens have a right to organize into trade unions.

YES | NO

**Comments:**

This is a right guaranteed by the Constitution.

**References:**

The Romanian Constitution, Article 9;  
The Law of the Trade-Unions (Legea sindicatelor nr. 54/2003);  
The Law regarding Collective Labor Agreement (Legea privind contractul colectiv de munca, nr. 130/1996);  
other several legal diplomas regulating the right of association” across a whole range of associations

**YES:** A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

**NO:** A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

**Comments:**

There are key sensitive areas of the State apparatus, such as the military and intelligent services forces, which oppose the creation of trade unions, but allow the creation of professional associations.

**References:**

Law 54/2003, Art. 4: Military, secret services, public prosecutors and magistrates are not allowed to form trade-unions.

**100:** Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

**75:**

**50:** Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

**25:**

**0:** Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

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## 5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

**YES** | NO

**Comments:**

Freedom of the media is guaranteed by law, and, in practice, government generally respects this right.

**References:**

Constitution, Art. 30

**YES:** A YES score is earned if freedom of the press is guaranteed in law, including all political parties, religions, and ideologies.

**NO:** A NO score is earned if any specific publication relating to government is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

**YES** | NO

**Comments:**

The Constitution guarantees freedom of speech and of press, and in practice the government generally respects these rights. An independent press, an effective judiciary and a functioning democratic system combine to ensure freedom of speech and of the press, including academic freedom.

**References:**

Constitution, Arts. 29, 30;

New Penal Code adopted in 2006 eliminated the insult offence, as well as other offences related to defamation (offences against insignia, defamation against the country or the nation, etc.).

**YES:** A YES score is earned if freedom of individual speech is guaranteed in law, including all political parties, religions, and ideologies.

**NO:** A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

## 6. Are citizens able to form media entities?

69

6a. In practice, the government does not create barriers to form a media entity.

100 | 75 | 50 | 25 | 0

### References:

The government does not create barriers against the creation of media entities. The Romanian Press Club (Clubul Roman de Presa), the main professional organization, has not complained about it.

**100:** Media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system.

**75:**

**50:** Formation of media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

**25:**

**0:** Media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. Division of broadcast bandwidth is widely viewed to be used as a political tool.

6b. In law, where a media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

### Comments:

As with most public authorities, appeals can be made to the Administrative Appeals Court (Curtea de Apel).

### References:

Audiovisual Law, nr. 504/2002, Art. 95

**YES:** A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied media license. A YES score is also earned if no license is necessary.

**NO:** A NO score is earned if there is no appeal process for media licenses.

6c. In practice, where necessary, citizens can obtain a media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

It takes eight months to obtain a radio or TV license; the print media are governed only by the Civil Code.

**References:**

The Audiovisual Law does not detail this question, but Government Emergency Ordinance no.79/2002 concerning the General Regulatory Framework for Communications, Art. 15, specifies that the licenses for the use of radio-electric frequencies shall be granted through an open, transparent and no-discriminatory procedure, within at most six weeks after receipt of an application, except for the licenses that are granted through competitive or comparative selection procedure, like TV and radio licenses, for which the term is at most eight months.

**100:** Licenses are not required or licenses can be obtained within two months.

**75:**

**50:** Licensing is required and takes more than two months. Some groups may be delayed up to six months.

**25:**

**0:** Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

In theory, citizens can obtain a media license at a reasonable cost; in practice, radio and TV licenses are obtained only by a company that can prove its solvency.

**References:**

According to the weekly magazine Capital", oftentimes companies buy very cheap licenses and then transfer/sell them at a very high price to other companies. In a small town, the price of a license is between 30,000-50,000 Euros\* (US\$39,280- 65,460), according to "Capital", May 25, 2006, www.capital.ro

\*NOTE: Romanian currency is RON (the old currency, ROL, is still in use), but all transactions are done in Euros.

**100:** Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

**75:**

**50:** Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

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## 7. Are the media able to report on corruption?

75

7a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

### Comments:

When reporting the truth, this is not illegal (there is no insult law in Romania.) If the report is not accurate, Article 30 (6) of the Constitution guarantees the protection of law, if someone's reputation has been damaged. Censorship is banned by Article 30(2).

### References:

Constitution, Art. 30, Art. 26(2)

**YES:** A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

**NO:** A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

7b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

### Comments:

Although independence of the media is guaranteed by Constitution, in practice, owners or even the government can put pressure on certain journalists or directors of newspapers to delay the exposure of a corruption-related story. Newspapers and television channels recruit the services of a series of leading political figures on a regular basis as political commentators. Depoliticizing the Romania media is a challenge, but for the moment most private electronic media remain openly political, with open connections to political actors or managed by political actors/ partners of political actors. For example the current government includes the Conservative Party (PC–Partidul Conservator), former ally of the Social Democrat Party (PSD– Partidul Social Democrat) ; the strength of the Conservative Party are TV stations (the influential Antena 1 and Antena 3) and the daily newspaper Jurnalul National. Antena 1 is one of three national networks and Antena 3 is one of the two national 24-hour news channels that define the public agenda. Other media outlets are owned by controversial businessmen, who use their newspapers and TV channels for political and/or economic gains. Their open connections to politicians could delay the exposure of corruption-related stories.

**References:**

Freedom House Report: Nations in Transit 2005;  
Mediaindex Report, [www.mediaindex.ro](http://www.mediaindex.ro);  
Article of [www.hotnews.ro](http://www.hotnews.ro), October 12, 2005 etc.

**100:** The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

**75:**

**50:** The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

**25:**

**0:** The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

7c. In practice, there is no prior government restraint on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

**Comments:**

Revealed corruption events always receive extensive media coverage, although their initial exposure can be delayed by the political interests of the owners. Some newspaper directors or TV channel editors may also act softer on a particular case involving a politician or party to which they are sympathetic.

**References:**

Interview with President of Romania Traian Basescu, *Adevarul*", June 13, 2005, [www.adevarulonline.ro](http://www.adevarulonline.ro);  
Freedom House Report, 2005

**100:** The government never prevents publication of controversial corruption-related materials.

**75:**

**50:** The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. In countries where illiteracy is higher, the government may allow a free print press but censor broadcast media.

**25:**

**0:** The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material.

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## 8. Are the media credible sources of information?

8a. In law, media companies are required to disclose their ownership.

YES | **NO**

**Comments:**

With the exception of two media companies, the owners of TV channels and newspapers are hidden behind mailbox companies Switzerland and Cyprus.

**References:**

Media Index, research about the Romanian ownership media: [www.mediaindex.ro](http://www.mediaindex.ro), made by the Independent Journalism Center ([www.cji.ro](http://www.cji.ro)) and Media Monitoring Agency ([www.mma.ro](http://www.mma.ro))

**YES:** A YES score is earned if media companies are required by law to disclose all owners of the company.

**NO:** A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

8b. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | **50** | 25 | 0

**Comments:**

Oftentimes, news and commentary are mixed in one and the same report; frequently the reports do not reflect the standpoint of all parties involved.

**References:**

Reports of the Media Monitoring Agency on the radio and tv political programs; [www.mma.ro](http://www.mma.ro)

**100:** Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

**75:**

**50:** Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

**25:**

**0:** Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

8c. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

**Comments:**

Media ownership is divided between foreign publishing houses, former Romanian politicians and domestic businessmen; half of all local television stations are fully or partially owned by former ruling party officials and related businessmen. Diversity of print media ownership is somewhat better, but individuals with close ties to the Social Democratic party control many local newspapers. Government advertising in the media increased in the electoral year 2004 to US\$8 million, up from US\$2 million in 2003. The European Union (EU) issued a critical report before the elections, accusing the Social Democrat Government of writing off the debts of some media outlets in return for favorable coverage; it was also alleged that it used fear of official audits and punitive taxes as a threat in order to discourage unfavorable coverage.

**References:**

Report regarding 2004 elections, made by Media Monitoring Agency; [www.mma.ro](http://www.mma.ro)

**100:** All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

**75:**

**50:** Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

**25:**

**0:** The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

8d. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

**Comments:**

In 2005, after the change of government, Romanian media were relieved of considerable political pressure. Press coverage of political events was far more balanced than it had been a year before.

**References:**

Freedom House Report: Nations in Transit 2005;  
reports of Media Monitoring Agency on 2005 and the decisions of the National Audio-Visual Council (the only regulatory authority in the field of audio-visual program services in the terms of and by observing the provisions of the Audiovisual Law)

**100:** The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content.

**75:**

**50:** The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

**25:**

**0:** The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

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## 9. Are journalists safe when investigating corruption?

67

9a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

### References:

Over the past year, no journalists investigating corruption were imprisoned. The central media and the international watchdog organizations would have covered such an occurrence.

**YES:** A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period.

**NO:** A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

9b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

### Comments:

There were isolated cases of intimidation, censorship and attacks against journalists, though less frequently than in 2004. The media reported several cases of journalists who, while videotaping or covering various official events, were assaulted by those being filmed. Such incidents occurred in public places, and the media reported that gendarmes and police frequently did not intervene. In February 2005 a cameraman with Alpha TV in Cluj was attacked by Bodocan Vasile, the mayor of Bontida, while trying to film an interview. The mayor destroyed film equipment worth ROL 36 million (US\$1,350).

The NGO Media Monitoring Agency reported that in June 2005 several journalists and writers working for Curierul de Botosani in Botosani county were threatened by local members of the extreme nationalist Greater Romania Party (PRM– Partidul Romania Mare). Valentin Guraliuc, PRM representative in the local council, reportedly threatened a journalist's mother with harm to her son if he continued to write about Guraliuc.

**References:**

Protests, statements and reports of Media Monitoring Agency, 2005 – 2006, www.mma.ro

**YES:** A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues.

**NO:** A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

9c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

**References:**

In the past year, no journalists investigating corruption were killed. The central and international media and the international watchdog organizations would have covered such an occurrence.

**YES:** A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period.

**NO:** A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

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## 70 I-3. Public Access to Information

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### 10. Do citizens have a legal right of access to information?

100

10a. In law, citizens have a right of access to government information and basic government records.

YES | NO

**Comments:**

Article 31 of the Constitution guarantees the right of public access to information of public interest: A person's right of access to any information of public interest cannot be restricted. The public authorities, according to their competence, shall be bound to

provide for correct information to citizens on public affairs and matters of personal interest. The right to information shall not be prejudicial to the protection of the young or to national security.”

**References:**

Law on Decisional Transparency in Public Administration;  
Romania signed the Aarhus Convention in June 1998 and ratified it in July 2000;  
Governmental Decision no. 878/2005 on public access to environmental information implements EU Directive 2003/4/EC and sets rules on access;  
Law no. 182 of April 12, 2002 on the protection of classified information;  
Law Regarding Free Access to Information of Public Interest, nr. 544/2001, 3. Decision on Methodological Norms of Putting into Force Law No. 544/2001 on Free Access to Information of Public Interest. The implementing regulations of the law state, free and unrestricted access to information of public interest shall be the rule and limitation of access shall be the exemption” It allows for any person to ask for information from public authorities and state companies. The authorities must respond in 10 days.

**YES:** A YES score is earned if there is a formal right to access any government documents. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request. There should be a formal process for requesting this information.

**NO:** A NO score is earned if there is no such right.

10b. In law, citizens have a right of appeal if access to a basic government record is denied.

**YES** | NO

**Comments:**

Citizens have a right of appeal, if access to a basic government record is denied. According to the Agency for Government Strategies (Agentia pentru Strategii Guvernamentale), there were over 700,000 requests in 2005. Two percent of the requests were denied, which resulted in 1845 administrative appeals (down from 6,154 in 2004). 55 percent of the appeals resulted in the decision being overturned, 33 percent were rejected and 11 percent were settled. There were more than 400 court cases.

**References:**

The Law Regarding Free Access to Information of Public Interest, nr. 544/2001, Art. 21, 22

**YES:** A YES score is earned if there is a formal process of appeal for rejected information requests.

**NO:** A NO score is earned if there is no such formal process.

10c. In law, there is an established institutional mechanism through which citizens can request government records.

**YES** | NO

**Comments:**

Article 11 of the Law Regarding Free Access to Information explicitly introduces the obligation of the public authorities to draft and archive minutes of their public meetings. Paragraph 2 regulates the citizens' access to such recordings according to law no. 544/2001; such recordings are considered information that can be obtained upon request. Article 4 for the law mentions public administrative authorities, excluding the legislative and the judiciary. Letters a) and b) of this article bring some supplementary information concerning the notion of central and local administrative authorities. The central administrative authorities include

ministries, other public administration bodies subordinated to the Government or the ministries, the decentralized public services and the autonomous administrative authorities. The Report of Transparency International explains that although the Government is not explicitly mentioned in the law, its act will be submitted to public debating carried out by the initiating authority.

**References:**

The Law Regarding Free Access to Information of Public Interest, nr. 544/2001, Art. 4, 11

**YES:** A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

**NO:** A NO score is earned if there is no such formal mechanism or institution.

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## 11. Is the right of access to information effective?

80

11a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

The Association for the Defense of Human Rights in Romania-Helsinki Committee (APADOR-CH—Asociația pentru Apărarea Drepturilor Omului în România – Comitetul Helsinki) reported that most public institutions respond to requests, although there are still problems with complex or delicate” requests. There are also ongoing problems with agencies charging excessive copying fees. The situation has significantly improved since last year.

**References:**

The Law Regarding Free Access to Information of Public Interest, nr. 544/2001 provisions that the authorities must respond in 10 days, but this term is not always respected in practice;  
Annual Report -2005 of the Association for the Defense of Human Rights in Romania – Helsinki Committee; [www.apador.org](http://www.apador.org)

**100:** Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

**75:**

**50:** Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

**25:**

**0:** Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

11b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Art. 7 of the Law Regarding Free Access to Information of Public Interest, nr. 544/2001 provisions that only the cost of copies are paid by the citizens.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

11c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

The appeals could be solved in a reasonable time period, but often this is a long process. Those denied can appeal to the Agency for Government Strategies concerned or to a court. Public employees can be disciplined for refusing to disclose information. The People's Advocate (Ombudsman) can also hear complaints and make recommendations. In 2004, the office received 403 complaints related to the denial of information.

**References:**

Report of the Public Policy Institute (IPP– Institutul pentru politici publice): Lack of Civil Readiness to Defend the Right to Access Public information and Participate in Decision Making": [www.ipp.ro](http://www.ipp.ro)

**100:** The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

**75:**

**50:** The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

11d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

According to the officials from Ombudsman, in practice not the costs discourage the citizens, but the inefficient of bureaucracy; The report of Public Policy Institute (IPP– Institutul pentru politici publice): Lack of Civil Readiness to Defend the Right to Access Public Information and Participate in Decision- making”; [www.ipp.ro](http://www.ipp.ro)

**100:** In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

**75:**

**50:** In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

**25:**

**0:** The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

11e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

**Comments:**

The Law on Decisional Transparency in Public Administration was approved in December 2002 and went into effect in April 2003. It requires meetings of government bodies to be open, the disclosure of information about pending activities, and requires the bodies to invite citizens to participate in decisions. According to the Agency for Government Strategies, there were 8,769 requests for information on draft laws and 7,140 recommendations received, of which 64 percent were included in the draft acts. There were 131 cases brought in court against violations of the law in 2005, nearly 30 percent of which resulted in decisions for the individual and 31 percent for the government body. The Agency expressed concern that the low numbers indicated a low level of civic involvement” but did note an eleven percent increase in recommendations from civil society groups.

**References:**

Law no. 52 of 21 January 2003 regarding the decisional transparency in the public administration;  
Agency for Government Strategies: [www.publicinfo.ro](http://www.publicinfo.ro);  
[gov.ro/guvernul/afis-inst-coord.php](http://gov.ro/guvernul/afis-inst-coord.php)

**100:** The government always discloses to the requestor the specific, formal reasons for denying information requests.

**75:**

**50:** The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

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## Category II. Elections

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### II-1. <sup>90</sup>Voting & Citizen Participation

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#### 12. Is there a legal framework guaranteeing the right to vote?

100

12a. In law, universal and equal adult suffrage is guaranteed to all citizens.

**YES** | NO

**Comments:**

Universal suffrage is a fundamental right, stated in the Constitution, Art. 36, (1): Every citizen having attained the age of eighteen by or on the election day shall have the right to vote". There are, however, a few restrictions stipulated in the Constitutions, Art 36, (2): "The mentally deficient or alienated, laid under interdiction, as well as persons disenfranchised by a final decision of the court cannot vote".

**References:**

The Constitution, Article 36;  
Law No. 68/1992 on the Election to the Chamber of Deputies and the Senate;  
Law on Local Public Administration no. 215/2001, last amended in April 2003;  
Law on Political Parties, No. 14/2003

**YES:** A YES score is earned if the right to vote is guaranteed to all citizens of that country. A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

**NO:** A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

12b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

**Comments:**

Regular elections are guaranteed by the Constitution and all electoral laws. Article 62 of the Constitution stipulates: The Chamber of Deputies and the Senate are elected for a term of office of four years, which may be prolonged by an organic law, in case of war or catastrophe”.

**References:**

The Constitution, Arts. 62; 83;  
Law No. 68/1992 on the Election to the Chamber of Deputies and the Senate;  
Law on Local Public Administration [215/2001, last amended in April 2003];  
Law on Political Parties, No 14/2003

**YES:** A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

**NO:** A NO score is earned if no such framework exists.

---

### 13. Can all citizens exercise their right to vote?

100

13a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, all adult citizens can almost always vote. According to the Constitution, every citizen having turned eighteen up to or on the election day shall have the right to vote, but the mentally deficient or alienated persons, laid under interdiction, as well as the persons disenfranchised by a final decision of the court cannot vote.

**References:**

Constitution, Art. 63

**100:** Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

**75:**

**50:** Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

**25:**

**0:** Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

13b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

**References:**

Constitution, Art. 62: The Chamber of Deputies and the Senate shall be elected by universal, equal, direct, secret and free suffrage, in accordance with the electoral law”.

**100:** Ballots are secret, or there is a functional equivalent protection, in all cases.

**75:**

**50:** Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

**25:**

**0:** Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

13c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, elections are almost always held according to a regular schedule.

**References:**

Constitution, Art. 62

**100:** Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

**75:**

**50:** Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

**25:**

**0:** Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

---

14. Are citizens able to participate equally in the political process?

14a. In law, all citizens have a right to form political parties.

YES | NO

**References:**

Constitution, Art. 8;  
Law on Political Parties, no 14/2003, Art. 1

**YES:** A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

**NO:** A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

14b. In law, all citizens have a right to run for political office.

YES | NO

**Comments:**

In law, all citizens almost always have a right to run for political office. The right of election is guaranteed of the Constitution: eligibility is granted to all citizens having the right to vote, who meet the requirements in Art. 16 (3), unless they are forbidden to join a political party in accordance with Art. 40"

**References:**

Constitution, Art. 37 (1), (2), Art. 16 (3), Art. 40 (3)

**YES:** A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence, terrorism, or criminality are banned from running for office.

**NO:** A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

14c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, all citizens almost always have a right to form political parties. According to the Law of Political Parties, no prior authorization is needed for citizens to constitute a political party, but a minimum of 25,000 signatures of active voters is required by law. There are other obstacles, because political parties must register with the Bucharest tribunal. The law requires a political party to submit to the Bucharest tribunal its statutes and program, and a roster of at least 25,000 signatures. These 25,000 founding members must be from at least 18 counties, including Bucharest, with a minimum of 700 people from each of these counties. The party statutes and program may not include ideas that incite war, discrimination, hatred of a national, racist, or religious nature.

**References:**

Law of Political Party, Art. 19, 20, 21;  
Constitution, Art.8

**100:** While there is no guarantee of electoral success, political parties can form freely without opposition.

**75:**

**50:** Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

**25:**

**0:** Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

14d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

**Comments:**

All citizens with active electoral capacity also have passive electoral capacity; in short, all voters have a right to run for elected office.

**References:**

Constitution, Art. 37 (1), (2), Art. 16 (3);  
Law of Political Parties

**100:** While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

**75:**

**50:** Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

**25:**

**0:** Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

14e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

**Comments:**

Romanian Parliament has two opposition parties: Social Democratic Party (PSD–Partidul Social Democrat) and Great Romania Party (PRM–Partidul Romania Mare), an extremist party.

**References:**

Website of the Chamber of Deputies: [www.cdep.ro](http://www.cdep.ro);

Website of the Senate: [www.senat.ro](http://www.senat.ro)

**100:** The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

**75:**

**50:** The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

**25:**

**0:** The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

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## II-2. Election Integrity

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15. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

15. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

**Comments:**

They are the Permanent Electoral Authority (AEC–Autoritatea Electorală Centrală) and the Central Electoral Bureau (BEC –Biroul Electoral Central).

**References:**

Law 373/2004 on the Election to the Chamber of Deputies and the Senate

**YES:** A YES score is earned if there is an agency or set of agencies/entities formally assigned to ensure the integrity of the election process.

**NO:** A NO score is earned if no agency or set of agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police.

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## 16. Is the election monitoring agency effective?

80

16a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

**Comments:**

The Permanent Electoral Authority is, according to the Law on Autonomous Administrative Institution, Art. 27, acting as a legal entity of general competence, that makes sure the provisions of the law on the organization and holding of elections or other national or local consultations are implemented consistently, between two election intervals. The president and vice-presidents of the Permanent Electoral Authority are members of the Central Electoral Bureau, that has attributions during the electoral period. The Central Electoral Bureau is formed of seven judges of the Supreme Court of Justice and sixteen representatives of the parties, political formations and political coalitions, participating in the poll.

**References:**

Law No. 373/2004 on the Elections for the Chamber of Deputies and the Senate, Art. 27

**YES:** A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies being contested in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no election monitoring agency.

16b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

**Comments:**

The law stipulates rules concerning the leadership of the Permanent Election Authority. The president has the status of a minister and is helped by two vice-presidents. The terms of office of the president and vice-presidents of the Permanent Election Authority is eight years each and may cease, according to the law, even before its expiration. The Permanent Election Authority is an autonomous administrative institution, but the appointments are supported by the government parties.

**References:**

Law No. 373/2004 on the Elections for the Chamber of Deputies and the Senate, Art. 31 (3)

**100:** Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

16c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

The Permanent Electoral Authority has a professional, full-time staff. The staff of the Permanent Electoral Authority is headed by a secretary general and is organized and functions according to Art. 28 (2) of the law and according to the Regulations approved by the Government;

Website of the Permanent Electoral Authority: [www.roaep.ro](http://www.roaep.ro)

**100:** The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

**25:**

**0:** The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

16d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

**Comments:**

The attributions of the Permanent Electoral Authority are stipulated in art. 29 of the law and are exercised between two election intervals. The Permanent Electoral Authority submits to Parliament a Report on the organization and progress of the elections (or

of the referendum) including information on participation in the ballot, process of voting, irregularities recorded during the vote, including legislative ones and the results of the elections; this report is made public as a White Book; yearly, the Permanent Electoral Authority submits a report on its activity to Parliament.

**References:**

Law No. 373/2004 on the Elections for the Chamber of Deputies and the Senate, Art. 29

**100:** Reports are released to the public on a predictable schedule, without exceptions.

**75:**

**50:** Reports are released, but may be delayed, difficult to access, or otherwise limited.

**25:**

**0:** The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

16e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

The Central Electoral Bureau (BEC–Biroul Electoral Central) can nullify elections for an electoral district in cases of frauds or other infringements.

**References:**

Law no. 373/2004 on the Elections for the Chamber of Deputies and the Senate, Art. 32 (h,i)

**100:** When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

**75:**

**50:** The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

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## 17. Are elections systems transparent and effective?

17a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

**Comments:**

Law No. 373/2004 on the Elections for the Chamber of Deputies and the Senate describes a transparent system of voter registration, but in practice this system is not always operational.

**References:**

Law 373/2004, Arts. 10-20;

Reports an statement of Association ProDemocratia": [www.apd.ro](http://www.apd.ro)

**100:** There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

**75:**

**50:** There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

**25:**

**0:** The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost<sup>n</sup> voting by non-existent voters is common.

17b. In law, election results can be contested through the judicial system.

YES | NO

**Comments:**

Law No. 373/2004 on the Elections for the Chamber of Deputies and the Senate provisions that the electoral results can be contested through the judicial system.

**References:**

Law 373/2004, Art. 113

**YES:** A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

**NO:** A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

17c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

**References:**

Although the Law on Election for Chamber of Deputies and the Senate stipulates that the electoral results can be contested in court according to the same law, no institution is empowered or compelled to investigate electoral fraud, which must be proven fully by the claimants;

Report on 2004 elections made by Association ProDemocratia”: [www.apd.ro](http://www.apd.ro)

**100:** The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

**75:**

**50:** The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

**25:**

**0:** The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

17d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

**References:**

The military and security forces remain neutral during elections by law. The Romanian and international watchdog organizations didn't find a meddling of the military and security forces in elections process.

**100:** The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

**75:**

**50:** The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

**25:**

**0:** The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

17e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

**Comments:**

In law, domestic and international election observers are allowed to monitor elections.

**References:**

Law No. 373/2004 on the Elections for the Chamber of Deputies and the Senate, Art. 75

**YES:** A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

**NO:** A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

17f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

**References:**

The Organization for Security and Cooperation in Europe (OSCE) noted after the last elections that the election observers are able to effectively monitor elections: [www.osce.org](http://www.osce.org);

The main internal organization which monitor election is ProDemocratia"; [www.apd.ro](http://www.apd.ro)

**100:** Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

**75:**

**50:** Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

**25:**

**0:** Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

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## 18. Are there regulations governing political financing?

100

18a. In law, there are regulations governing private contributions to political parties.

**YES** | NO

### Comments:

Individual and companies contributions are acceptable only under certain limits.

### References:

Law on Financing Political Parties and Electoral Campaigns 43/200,3 Art 5. Recently (July 2006), the law was changed, but it has not yet been enforced.

**YES:** A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

**NO:** A NO score is earned if there is no regulation of private contributions to political parties.

18b. In law, there are limits on individual donations to candidates and political parties.

**YES** | NO

### Comments:

The individual donations to parties by a single sources are restricted to 200 national minimum wages per year (1 n.m.w = US\$144 monthly value). Anonymous donations are permitted up to national minimum wages per year (10 Art. 5 (6)).

### References:

Law 43/2003, Art. 5

**YES:** A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

**NO:** A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

18c. In law, there are limits on corporate donations to candidates and political parties.

YES | NO

**Comments:**

The corporate donations to a party are restricted to 500 national minimum wages per year (1 n.m.w = US\$144 monthly value).

**References:**

Law 43/2003, Art. 5(4)

**YES:** A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

**NO:** A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

18d. In law, there are limits on total political party expenditures.

YES | NO

**Comments:**

There are spending limits per candidate: each candidate for Parliament can spend 150 national minimum wages, every party can spend 25,000 national minimum wages (1 n.m.w = US\$144 monthly value).

**References:**

Law 43/2003, Arts. 21 and 22

**YES:** A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

**NO:** A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

18e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

**Comments:**

The law requires the parties and candidates to disclose their donations.

**References:**

Law 43/2003, Art. 5(7)

**YES:** A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

**NO:** A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

18f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | NO

**Comments:**

The Court of Accounts (Curtea de Conturi) is the only public authority that controls party and candidates financing.

**References:**

Law 43/2003, Arts. 24, 25

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

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## 19. Are the regulations governing political financing effective?

58

19a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

**References:**

The limit established by law is not enough in the context of the total costs of running a campaign and the possibilities of individual donations. Art 21 of the Law 43/2003 provisions that each candidate for Parliament can spend 150 national minimum wages, every party can spend 25,000 national minimum wages (in Romania the minimum wage is US\$144, [www.insse.ro](http://www.insse.ro), the site of the National Institute of Statistics);

See also the reports of ProDemocratia", an organization specialised on the elections problems: [www.apd.ro](http://www.apd.ro)

**100:** Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

**75:**

**50:** Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

19b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

100 | 75 | **50** | 25 | 0

#### References:

Existing limits were exceeded during the last elections campaign. However, the big donors find the ways to infringe the law, especially through foundations and NGOs, according to media coverage. See the reports of ProDemocratia", [www.apd.ro](http://www.apd.ro) or the feature of newspaper from the last elections campaign; "Adevarul", August 1, 2003; [www.adevarulonline.ro/2003-01-08/Politic/fundatiile-gurule-de-varsare-a-banilor-negri-catre-partide\\_29276.html](http://www.adevarulonline.ro/2003-01-08/Politic/fundatiile-gurule-de-varsare-a-banilor-negri-catre-partide_29276.html)

**100:** Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

**75:**

**50:** Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making to donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

19c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

**References:**

The costs of an election campaign for a party or a candidate is more than the low limits;  
See the comments of the Institute of the Public Policy; <http://www.ipp.ro/plus.php?cod=cf>

**100:** Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

**75:**

**50:** Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

19d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

**References:**

Every year and after elections, The Court of Accounts (Curtea de Conturi) initiates controls on administration and use of the financial resources of the parties and candidates;  
See the web site of the Court of Accounts: [www.rcc.ro/rcceng/raf.htm](http://www.rcc.ro/rcceng/raf.htm)

**100:** The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

**75:**

**50:** The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

19e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**References:**

When the parties do not respect the Law on Financing Political Parties and Electoral Campaigns 43/2003, the Court of Accounts can impose penalties, according to the Law regarding Court of Account, 77/2002, Art . 55

**100:** When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

**75:**

**50:** The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

19f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

Oftentimes the audits of the Court of Accounts (Curtea de Conturi) are delayed.

**References:**

Contributions to political parties and candidates are audited only by the Court of Accounts;  
Law 94/1992 on the organization and operation of the Court of Accounts, republished, modified and completed by the law 77/2002: [www.rcc.ro/rcceng/rcceng.htm](http://www.rcc.ro/rcceng/rcceng.htm)

**100:** Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

**75:**

**50:** Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

**25:**

**0:** Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

20a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

The parties are required to disclose the information related to financial support in 10 days after it is requested, but this term is not obeyed in practice.

**References:**

Law on Financing Political Parties and Electoral Campaigns 43/2003, Arts. 5(8), 6(2), 25. The disclosures are not always delivered on time;

See the analysis of the weekly magazine, *Banii nostri*, October 17, 2004: [www.baniiinoistri.ro/html/dinrevista/coverstory.html?ContentID=18](http://www.baniiinoistri.ro/html/dinrevista/coverstory.html?ContentID=18)

**100:** Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

**75:**

**50:** Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

**25:**

**0:** Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

20b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

15 days after elections, every party and candidate must deliver a copy of the budget to the Court of Accounts (Curtea de Conturi). The court then makes a report that becomes public, but the process usually takes an unnecessarily long time.

**References:**

Citizens have immediate access in the Official Gazette (Monitorul Oficial);  
Law 43/2003, Art. 26, Law regarding Court of Account, 77/2002, Art. 56

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take two to four weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

20c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Records are accessible for free on internet, at the offices of locals parties or on the Report of the Court of Accounts (Curtea de Conturi) published in the Official Gazette (Monitorul Oficial): [www.rcc.ro/rccdiac/publicatii.htm](http://www.rcc.ro/rccdiac/publicatii.htm)

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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### Category III. Government Accountability

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#### III-1. <sup>78</sup>Executive Accountability

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21. In law, can citizens sue the government for infringement of their civil rights?

100

21. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

**Comments:**

Citizens can sue the government for infringement of their civil rights.

**References:**

Constitution, Art. 52(1): Any person aggrieved in his/her legitimate rights or interests by a public authority, by means of an administrative act or by the failure of a public authority to solve his/her application within the lawful time limit, is entitled to the acknowledgement of his/her claimed right or legitimate interest, the annulment of the act and reparation for the damage.”

**YES:** A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

**NO:** A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

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## 22. Can the chief executive be held accountable for his/her actions?

88

22a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

**Comments:**

Members of the executive, as heads of the public administration, are required to give reasons for their administrative acts. Political acts are excluded, but the media are always interested in policy-making decisions of members of the executive, so members of the executive are usually asked to explain the reasons for their decisions.

**References:**

Constitution, Arts. 111, 112;  
Government Law, 90/2001, Art. 16

**100:** The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

**75:**

**50:** The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

**25:**

**0:** The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such

sessions.

22b. In law, the judiciary can review the actions of the executive.

**YES** | NO

**Comments:**

The judiciary cannot review policy decisions. It can, however, review any act of the executive that is under control of the legitimacy of the Constitutional Court (Curtea Constitutionala). The Constitutional Court is the only judicial organ that can exercise a limited review over governmental legislative actions. The President of Romania, one of the presidents of the two Chambers, the Government, the High Court of Cassation and Justice (Inalta Curte de Casatie si Justitie), the Advocate of the People may request the Constitutional Court to undertake an anticipatory review of the constitutionality of any provision of governmental decree.

**References:**

Constitution, Art. 146

**YES:** A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

**NO:** A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

22c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | **75** | 50 | 25 | 0

**Comments:**

Actions of the executive can be brought before administrative judges and the Constitutional Court (Curtea Constitutionala).

**References:**

Constitution, Arts. 146, 147;

Law 554/2004, Art. 1 regarding of administrative litigation;

Law 47/1992, Art. 11, with changes introduced by Law 138/1997, Law 124/2000, Law 232/2004;

The results of these actions are published on the web sites of the Constitutional Court: [www.ccr.ro](http://www.ccr.ro)

**100:** When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

**75:**

**50:** The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

**25:**

**0:** The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

22d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

**References:**

According to the National Institute of Statistics, between January 1- April 20, 2005 a total of 52 emergency ordinances were submitted to parliament, compared with 70 in 2004: [www.insse.ro](http://www.insse.ro)

**100:** The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

**75:**

**50:** The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

**25:**

**0:** The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

---

### 23. Is the executive leadership subject to criminal proceedings?

50

23a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

**Comments:**

With the exception of the charge of high treason or attack against the Constitution, the law protects the head of state from prosecution while he is in power.

**References:**

Constitution, Art. 95(1):In case of having committed grave acts infringing upon constitutional provisions, the President of Romania may be suspended from office by the Chamber of Deputies and the Senate, in joint sitting, by a majority vote of Deputies and Senators, and after consultation with the Constitutional Court. The President may explain before Parliament with regard to

imputations brought against him”; Art. 96: “The Chamber of Deputies and the Senate may decide the impeachment of the President of Romania for high treason, in a joint session, based on the votes of at least two thirds of the number of deputies and senators.”

**YES:** A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations.

**NO:** A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

23b. In law, ministerial-level officials can be prosecuted for crimes they commit.

**YES** | NO

**Comments:**

The Constitution protects the head of the state, the prime minister, the presidents and the ministerial-level officers, but recently the law regarding ministerial accountability was amended.

**References:**

Constitution, Art. 109(2): Only the Chamber of Deputies, the Senate and the President of Romania have the right to demand legal proceedings to be taken against members of the Government for acts committed in the exercise of their office. If such legal proceedings have been requested, the President of Romania may decree that they be suspended from office. Institution of proceedings against a member of the Government entails his suspension from office. The case shall be within the competence of the High Court of Cassation and Justice (Inalta Curte de Casatie si Justitie).”;  
Law no. 90/2005 amending and completing Law no. 115/1999 regarding ministerial accountability has repealed the immunity granted to former ministers and has increased the degree of responsibility for the facts and acts carried by the ministers while in their mandate.

**YES:** A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

**NO:** A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

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## 24. Are there regulations governing conflicts of interest by the executive branch?

38

24a. In law, the heads of state and government are required to file a regular asset disclosure form.

**YES** | NO

**Comments:**

In law, the head of state is required to file an asset disclosure form. The President of the Republic has to present a patrimonial declaration to the Constitutional Court (Curtea Constitutionala).

**References:**

The Government Emergency Ordinance no. 14/2005 regarding the wealth declarations and interest conflicts;  
Law 115/1996 regarding the wealth declarations, Arts.2 and 4

**YES:** A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES.

**NO:** A NO score is earned if either the head of state or government is not required to disclose assets.

24b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

**Comments:**

Every year, ministers have to publish on the government website the patrimonial declaration of wealth. Ministers have to present a patrimonial declaration to the office of prime minister.

**References:**

The Government Emergency Ordinance no. 14/2005 regarding the wealth declarations and interest conflicts;  
Law 115/1996 regarding the wealth declarations, Art. 4

**YES:** A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

**NO:** A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

24c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

**Comments:**

The regulation was introduced in the anti-corruption package law.

**References:**

The Government Emergency Ordinance no. 31/2006;  
Law no. 161/2003

**YES:** A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

**NO:** A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

24d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | **NO**

**References:**

There is only a project of law about an independent auditing of the executive and legislative branches asset disclosure forms.

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

24e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

**References:**

There are no restrictions on heads of state and government and ministers entering the private sector after leaving the government.

**YES:** A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

**NO:** A NO score is earned if no such restrictions exist.

24f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | **0**

**References:**

There are no restrictions on heads of state and government and ministers entering the private sector after leaving the government.

**100:** The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

**75:**

**50:** The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

**25:**

**0:** The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

24g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

**References:**

There is not a mechanism for control of gifts and hospitality offered to the members of the executive. This is provisioned by the government project of law regarding the National Integrity Agency.

**100:** The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50:** The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

**25:**

**0:** The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

24h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

**References:**

There is only a project of law that provisions an independent auditing of the executive and legislative branches asset disclosure forms.

**100:** Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

**75:**

**50:** Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

**25:**

**0:** Executive branch asset disclosures are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

---

## 25. Can citizens access the asset disclosure records of the heads of state and government?

100

25a. In law, citizens can access the asset disclosure records of the heads of state and government.

**YES** | NO

**Comments:**

Records are available and published in the Official Gazette of Romania (Monitorul Oficial). Asset disclosure records are now available on the websites of presidency and government.

**References:**

The Government Emergency Ordinance no. 14/2005 regarding the wealth declarations and interest conflicts;  
Law 115/1996 regarding the wealth declarations, Art 2

**YES:** A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

**NO:** A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

25b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

**100** | 75 | 50 | 25 | 0

**References:**

Citizens have access to the asset disclosure records on the websites of the presidency and government: [www.gov.ro](http://www.gov.ro), [www.presidency.ro](http://www.presidency.ro)

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some additional delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

The access is free on the websites of the presidency and government: [www.gov.ro](http://www.gov.ro), [www.presidency.ro](http://www.presidency.ro)

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

---

26. In practice, is the ruling party distinct from the state?

100

26. In practice, is the ruling party distinct from the state?

**References:**

The ruling party is distinct from the state;  
 State funds are not used for political party purposes (other than public financing for elections);  
 Constitution, Art. 1;  
 Annual law of the budget;  
 Law 379/2005 regarding to the state budget on 2006

**100:** Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

**75:**

**50:** The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

**25:**

**0:** The government is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

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## III-2. Legislative Accountability

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### 27. Can members of the legislature be held accountable for their actions?

100

27a. In law, the judiciary can review laws passed by the legislature.

**YES** | NO

**Comments:**

The judiciary can only review the actions dealing with control of legitimacy, not those dealing with content of the legislature's actions. The Constitutional Court (Curtea Constitutionala) can adjudicate on the constitutionality of laws, before the promulgation thereof upon notification by the President of Romania, one of the presidents of the two Chambers, the Government, the High Court of Cassation and Justice (Inalta Curte de Casatie si Justitie), the Advocate of the People, a number of at least 50 deputies or at least 25 senators, as well as ex-officio, on initiatives to revise the Constitution;

**References:**

Constitution, Art. 146;  
 Law no 47/1992 on Constitutional Court, Art.11, with changes introduced by Law 138/1997, Law 124/2000, Law 232/2004

**YES:** A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

**NO:** A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

27b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

**References:**

When there is a claim of legitimacy, the Constitutional Court (Curtea Constitutionala) has the duty to act; Constitution, Arts. 146, 147;  
The decisions of the Constitutional Court can be seen on the [www.ccr.ro](http://www.ccr.ro)

**100:** When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

**75:**

**50:** The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

**25:**

**0:** The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

27c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

**Comments:**

Members of the legislature can be prosecuted under criminal law, but they cannot be searched, detained or arrested without the consent of the Chamber they belong to, after being heard. They cannot be held responsible for the exercise of their functions. Investigations, searches and wiretapping require previous authorization of the Chamber. The investigation and prosecution shall only be carried out by the Public Prosecutor's Office attached to the High Court of Cassation and Justice. The High Court of Cassation and Justice (Inalta Curte de Casatie si Justitie) shall have jurisdiction over this case. However, the Paragraph (3) of the Art. 72 of the Constitution provisions that if caught in the act, Deputies or Senators may be detained and searched. The Minister of Justice shall inform without delay the president of the Chamber in question on the detainment and search. If, after being notified, the Chamber in question finds there are no grounds for the detainment, it shall order the annulment of such a measure at once."

**References:**

Constitution, Art. 72

**YES:** A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

**NO:** A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

---

## 28. Are there regulations governing conflicts of interest by members of the national legislature?

29

28a. In law, members of the national legislature are required to file an asset disclosure form.

**YES** | NO

**Comments:**

Every year, deputies and senators have to published on the Chamber of Deputies and respectively the Senate websites the patrimonial declarations of wealth. MPs have to present a patrimonial declaration to the office of the president chamber 15 days after elections.

**References:**

The Government Emergency Ordinance no. 14/2005 regarding the wealth declarations;  
Law 115/1996, Art 4

**YES:** A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

**NO:** A NO score is earned if any member of the legislature is not required to disclose assets.

28b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

**References:**

There are no laws restricting national legislators to enter the private sector after leaving the government

**YES:** A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

**NO:** A NO score is earned if no such restrictions exist.

28c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

**Comments:**

The Romanian officials can receive gifts of maximum 300 euros (US\$392).

**References:**

The Government Emergency Ordinance no. 14/2005 regarding the wealth declarations;  
Law 115/1996

**YES:** A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

**NO:** A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

28d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

**References:**

On request from the European Union, Parliament will soon deliberate a new law about the Integrity National Agency.

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

28e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

**References:**

There are no laws restricting national legislators to enter the private sector after leaving the government.

**100:** The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

**75:**

**50:** The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

**25:**

**0:** The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

28f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

**References:**

There is no legal mechanism to control gifts and hospitality offered to the members of the executive.

**100:** The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50:** The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

**25:**

**0:** The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

28g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

**References:**

On request from the European Union, Parliament will soon deliberate a new law about the Integrity National Agency. Until now, there has been no law on auditing the asset disclosures of those in the legislative branch.

**100:** Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

**75:**

**50:** Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

**25:**

**0:** Legislative branch asset disclosures are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

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## 29. Can citizens access the asset disclosure records of members of the national legislature?

100

29a. In law, citizens can access the asset disclosure records of members of the national legislature.

**YES** | NO

### Comments:

Records are available in the Official Gazette ( Monitorul Oficial), and on the websites of the Chamber of Deputies and respectively the Senate: [www.cdep.ro](http://www.cdep.ro); [www.senat.ro](http://www.senat.ro)

### References:

The Government Emergency Ordinance no. 14/2005 regarding the wealth declarations;  
Law 115/1996

**YES:** A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

**NO:** A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

29b. In practice, citizens can access these records within a reasonable time period.

**100** | 75 | 50 | 25 | 0

### References:

Citizens can access the records at [www.cdep.ro](http://www.cdep.ro) and [www.senat.ro](http://www.senat.ro)

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

29c. In practice, citizens can access these records at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Citizens can access the records at [www.cdep.ro](http://www.cdep.ro) and [www.senat.ro](http://www.senat.ro)

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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### 30. Can citizens access legislative processes and documents?

100

30a. In law, citizens can access records of legislative processes and documents.

YES | NO

**Comments:**

Records are available in the Official Gazette ( Monitorul Oficial), and on the websites of the Chamber of Deputies and respectively the Senate: [www.cdep.ro](http://www.cdep.ro); [www.senat.ro](http://www.senat.ro)

**References:**

Regulations of Chamber of Deputy, Regulation of Senate, Art 68;  
Constitution provisions that The sittings of both Chambers shall be public.”

**YES:** A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

**NO:** A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

30b. In practice, citizens can access these records within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Citizens can access the records at [www.cdep.ro](http://www.cdep.ro) and [www.senat.ro](http://www.senat.ro)

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access these records at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Citizens can access the records at [www.cdep.ro](http://www.cdep.ro) and [www.senat.ro](http://www.senat.ro)

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## 82 III-3. Judicial Accountability

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### 31. Are judges appointed fairly?

92

31a. In practice, there is a transparent procedure for selecting national-level judges.

YES | NO

**Comments:**

The Constitution provisions that the appointed proposals, as well as the promotion, transfer of, and sanctions against judges shall only be within the competence of the Superior Council of Magistracy (Consiliul Superior al Magistraturii), under the terms of its organic law". The judges appointed by the President of Romania shall be irremovable, according the law.

**References:**

Constitution, Art. 125;  
Law no. 317/2004 of Superior Council of Magistracy;  
Law no. 247/2005 regarding justice reforms;  
Law no. no.303/2004 of magistrate status;  
Law no. 304/2004 regarding judiciary organization

**YES:** A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages.

**NO:** A NO score is given if there is no formal process of selection or the process is conducted without public oversight.

31b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | 50 | 25 | 0

**Comments:**

Competition is based on individual curriculum and merit. In Romania, with the exception of trainee judges, the appointment is

made by the President of Romania, upon the proposal of the Superior Council of the Magistracy (consiliul Superior al Magistraturii), while the promotion, transfer and sanctioning of the judges appointed according to the aforementioned procedure may solely be performed by the Superior Council of the Magistracy.

**References:**

Constitution, Arts. 124, 125;

Law no. 303/2004, regarding Magistrates Statute, Arts. 11-19, with changes introduced by the Law no. 247/2005;

Law no. 317/2004 regarding Superior Council of Magistracy, Art. 37

**100:** National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

**75:**

**50:** Most national-level judges selected meet these qualifications, with some exceptions.

**25:**

**0:** National-level judges are often unqualified due to lack of training or experience.

31c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

**YES**

**NO**

**Comments:**

Appointment of the High Court of Cassation and Justice (inalta Curte de Casatie si Juustitie) is by means of a competition, based on curricula and is open to member of the judiciary, public prosecutors and other jurists of merit, as determined by law. The Superior Council of Magistracy is the body entrusted to appoint, allocate, transfer and promote judges. Superior Council of Magistracy (Consiliul Superior al Magistraturii) is a collegial body, independent from the public authorities, and its main duties of the are related to the compliance with the status of the magistrates (i.e. the judges and the public prosecutors) and the disciplinary control of the judges activity.

The president and vice president of the High Court of Cassation an Justice are appointed by President of Romania upon the proposal of Superior Council of Magistracy.

**References:**

Law no. 303/2004 regarding Magistrates Statute, Arts. 51, 52 with changes introduced by the Law no. 247/2005;

Law no. 317/2004 regarding Superior Council of Magistracy, Art. 37

**YES:** A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

**NO:** A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

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## 32. Can members of the judiciary be held accountable for their actions?

32a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

**Comments:**

The verdict contains a substantiated explanation of the crimes for which the accused has been prosecuted and the findings gathered to arrive to the final court, but judges are not obliged to give reasons for their decisions.

**References:**

Law no 47/1992, Arts. 59, 60, regarding the Constitutional Court (Curtea Constitutionala), republished in Official Gazette (Monitorul Oficial), Part. I, no. 502, June 3, 2004;

Regulation on the administrative organization and functioning of the High Court of Cassation and Justice (Inalta Curte de Casatie si Justitie), Art. 45, republished in Official Gazette, Part. I, no. 1076, November 11, 2005

**YES:** A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

**NO:** A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

32b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

**References:**

The reasons of decisions could be found on the web site of the High Court of Cassation and Justice (Inalta Curte de Casatie si Justitie): [www.scj.ro](http://www.scj.ro) and on the web site of the Constitutional Court (Curtea Constitutionala): [www.ccr.ro](http://www.ccr.ro)

**100:** Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

**75:**

**50:** Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

**25:**

**0:** Judges commonly issue decisions without formal explanations.

32c. In law, there is an ombudsman (or equivalent agency or mechanism) for the national-level judicial system.

YES | NO

**Comments:**

The ombudsman, named the People's Advocate (Avocatul Poporului), is appointed for a term of five years in order to defend the natural person's rights and freedom. However, the People's Advocate's jurisdiction does not include the judiciary.

**References:**

Constitution, Art. 58;

Law no. 35/1997 on the Organization and Functioning of the Institution of the People's Advocate, amended and completed with Law no. 125/1998 and Law no. 181/2002

**YES:** A YES score is earned if there is a ombudsman or equivalent mechanism for the judicial system. A judicial ombudsman is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

**NO:** A NO score is earned if no agency or mechanism is specifically mandated to act as a judicial ombudsman.

32d. In law, the judicial ombudsman (or equivalent agency or mechanism) is protected from political interference.

YES | NO

**Comments:**

The Institution of the People's Advocate (Avocatul Poporului) is an autonomous public authority, independent of any public authority, under the terms of the law". The People's Advocate cannot be subjected to any imperative or representative mandate. No one can compel the People's Advocate to obey any instructions or orders. However, the People's Advocate's jurisdiction does not include the judiciary.

**References:**

The Law no. 35/1997 on the Organization and Functioning of the Institution of the People's Advocate ;  
Constitution, Arts. 2, 58

**YES:** A YES score is earned if there are formal rules establishing that the judicial ombudsman is operationally independent from political interference by the executive, legislative or judicial branches.

**NO:** A NO score is earned if there are no formal rules establishing the independence of the judicial ombudsman. A NO score is given if the judicial ombudsman function is carried out by an inherently subordinate organization, such as an executive ministry or legislative committee.

32e. In practice, when necessary, the judicial ombudsman (or equivalent agency or mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

At the request of persons whose rights and freedoms have been infringed, or on due to motivated reasons, the People's Advocate (Avocatul Poporului) may decide upon the confidential character of his activity. The People's Advocate follows up the legal solution of the complaints received and requests from the public administration authorities or civil servants concerned to put an end to the respective violation of civic rights and freedoms, to reinstate the complainant in his rights and to redress for the damages thus caused. However, the People's Advocate's jurisdiction does not include the judiciary.

**References:**

The Law no. 35/1997 on the Organization and Functioning of the Institution of the People's Advocate, Art.3 and 13( c)

**100:** The ombudsman aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The ombudsman is fair in its application of this power.

**75:**

**50:** The ombudsman will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The ombudsman, though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The ombudsman rarely investigates on its own or cooperates in other agencies' investigations, or the ombudsman is partisan in its application of this power.

32f. In practice, when necessary, the judicial ombudsman (or equivalent agency or mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

Through his recommendations, the People's Advocate (Avocatul Poporului) notifies the public administrative authorities about the illegality of the administrative acts or facts. However, the People's Advocate's jurisdiction does not include the judiciary.

**References:**

Law no.35/1997, Art. 21

**100:** When rules violations are discovered, the ombudsman is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

**75:**

**50:** The ombudsman enforces rules, but is limited in its effectiveness. The ombudsman may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The ombudsman does not effectively penalize offenders. The ombudsman may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The ombudsman may be partisan in its application of power.

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## III-4. Budget Processes

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### 33. Can the legislature provide input to the national budget?

100

33a. In law, the legislature can amend the budget.

**YES** | NO

**Comments:**

The Chamber of Deputies and the Senate approve, by Constitution, the State budget and the State social security budget; the legislature, almost always, amends the budget.

**References:**

Constitution, Art. 65;  
Law of Government, no. 90/2001, Art. 11 (f)

**YES:** A YES score is earned if the legislature has the power to add or remove items to the national government budget.

**NO:** A NO score is earned if the legislature can approve, but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

33b. In practice, significant public expenditures require legislative approval.

**100** | 75 | 50 | 25 | 0

**Comments:**

The Government and other bodies of public administration are obliged, within the parliamentary control over their activity, to present the information and documents requested by the Chamber of Deputies, the Senate, or parliamentary committees, through their respective presidents. In general, for the significant public expenditures, the Government elaborates projects of law that must receive legislative approval.

**References:**

Law 90/2001, Art 11 (e);  
Constitution, Art.74 (3)

**100:** All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

**75:**

**50:** Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

**25:**

**0:** The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

33c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

**References:**

In this moment, the two opposition parties are strong enough and they have overturned many government initiatives:  
[www.cdep.ro](http://www.cdep.ro); [www.senat.ro](http://www.senat.ro)

**100:** Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

**75:**

**50:** Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

**25:**

**0:** Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

---

### 34. Can citizens access the national budgetary process?

83

34a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

**Comments:**

The sittings of both Chambers are public, by Constitution, and the parliamentary debates are recorded by electronic means and verbatim reports. The verbatim reports are posted on the website of the Chamber of Deputies and the Senate respectively within ten days at the most, and are published in the Official Gazette (Monitorul Oficial) of Romania.

**References:**

Constitution, Art. 68;  
Regulations of the Chamber of Deputies, Art 153;  
Regulation of the Senate, Arts. 29, 31 (2 ) (e)

**100:** Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

**75:**

**50:** There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

**25:**

**0:** Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

34b. In practice, citizens provide input at budget hearings.

100 | 75 | **50** | 25 | 0

**References:**

The citizens provide input at budget hearing by professional associations and trade unions;  
see the actions of 'Cartel Alfa' Confederation: [www.cartel-alfa.ro/navigare.asp?id=77](http://www.cartel-alfa.ro/navigare.asp?id=77) or 'Fratia' Confederation: [www.cnslr-fratia.ro/default.asp?nod=7](http://www.cnslr-fratia.ro/default.asp?nod=7)

**100:** Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

**75:**

**50:** Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

**25:**

**0:** Citizens or CSOs have no formal access to provide input to the budget debate.

34c. In practice, citizens can access itemized budget allocations.

**100** | 75 | 50 | 25 | 0

**References:**

Citizens have access to the itemized budget allocation by the Law of the Budget that is public and by the Official Gazette of

**100:** Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

**75:**

**50:** Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

**25:**

**0:** Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

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### 35. In law, is there a separate legislative committee which provides oversight of public funds?

100

35. In law, is there a separate legislative committee which provides oversight of public funds?

**YES** | NO

#### Comments:

The jurisdictional duties regarding the manner of forming, management and use of the financial resources of the state and of the private sector are incumbent upon, and exercised by, the Court of Accounts (Curtea de Conturi), in its capacity as an autonomous central public authority that carries out its activity near the Parliament of Romania.

#### References:

Law 94/1992;  
Law 77/2002

**YES:** A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

**NO:** A NO score is earned if no such body exists. A NO score is earned if there is a body executing this function but it is not under the direction of the legislature.

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### 36. Is the legislative committee overseeing the expenditure of public funds effective?

63

36a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

**Comments:**

In Romania, there are two legislative committees overseeing the expenditure of public funds: the Committee of Chamber of Deputies for Budget, Finance, and Banks and the Committee of Senate for Budget, Finance, and Bank. The only independent institution that oversees in practice the expenditure of public funds is the Court of Accounts (Curtea de Conturi). The parliamentary committees of Budget, Finance, and Banks have responsibilities in the state budget and budgetary execution, the state social insurance budget and its execution, financial policy taxes and duties system, monetary balance, monetary circulation, credits and credit system, interest, discount, stock exchange and commercial papers; external loans of the State or guaranteed by the State; investments out of budgetary credits.

**References:**

Interview with economical analyst Lidia Moise from NewsIn, a Romanian News Agency

**100:** Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

**75:**

**50:** Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

**25:**

**0:** There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

36b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

**Comments:**

The actions of the parliamentary committees of Budget, Finance, and Banks are relatively equitable.

**References:**

Interview with economical analyst Lidia Moise from NewsIn, a Romanian News Agency

**100:** The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

**75:**

**50:** The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

**25:**

**0:** The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

36c. In practice, this committee is protected from political interference.

100 | 75 | **50** | 25 | 0

**Comments:**

The parliamentary committees of Budget, Finance, and Banks are the political committees and its decisions are sometimes influenced by the political interests.

**References:**

The parliamentary committees of Budget, Finance, and Banks are composed from representatives of all parliamentary parties: Deputy Chamber ([www.cdep.ro/pls/parlam/structura.co?idc=2](http://www.cdep.ro/pls/parlam/structura.co?idc=2)) and Senate ([www.senat.ro/PaginaPrincipala.aspx?tdID=45&divID=3&b=0&adr=%2fpagini%2fProceduri+parlamentare%2fAgenda%2factivitatea](http://www.senat.ro/PaginaPrincipala.aspx?tdID=45&divID=3&b=0&adr=%2fpagini%2fProceduri+parlamentare%2fAgenda%2factivitatea))

**100:** This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

**75:**

**50:** This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

**25:**

**0:** This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

36d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | **75** | 50 | 25 | 0

**References:**

According to the Regulations of Chamber of Deputy and Regulation of Senate, the parliamentary committees of Budget, Finance, and Banks initiates independent investigation into great irregularities of its field of activities.

**100:** When irregularities are discovered, the committee is aggressive in investigating the government.

**75:**

**50:** The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

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## Category IV. Administration and Civil Service

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### IV-1. <sup>83</sup>Civil Service Regulations

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37. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

75

37a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

**Comments:**

The Civil Servant Statute (The Civil Servant Code of Conduct) demands that public officials be impartial, neutral and objective while exercising their duties.

**References:**

Civil Servant Code of Conduct (Law 7/2004), Art. 3(e)

**YES:** A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

**NO:** A NO score is earned if there are no formal rules establishing an independent civil service.

37b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

**Comments:**

The Civil Servant Code of Conduct provides special provisions to prevent nepotism, cronyism, and patronage within the civil service.

**References:**

Law 7/2004 regarding Civil Servant Code of Conduct, Arts. 4(e), 16(2) and 16 (3)

**YES:** A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

**NO:** A NO score is earned if no such regulations exist.

37c. In law, there is an independent redress mechanism for the civil service.

YES | **NO**

**Comments:**

The Civil Service Law does not provision an independent redress mechanism for the civil service, but Art 68 of the Law 188/199 on the Civil Servant Statute (the Civil Service Law) republished in the Official Gazette (Monitorul Oficial), no. 251, march 22, 2004 specified the possibility of judicial redress of administrative acts. On the other hand the judicial redress of administrative acts and compensation right are recognized in Article 52 of the Constitution. Any person aggrieved in his/her legitimate right or interests by a public authority, by means of an administrative act or by the failure of public authority to solve his/her application within the lawful time limit, is entitled to the acknowledgement of his/her claimed right or legitimate interest, the annulment of the act and reparation for the damage.

**References:**

Constitution, Art. 52;

Law 188/1999 on the Civil Servant Statute (the Civil Service Law), Art. 68, republished in the Official Gazette, no. 251, March 22, 2004

**YES:** A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

**NO:** A NO score is earned if no such mechanism exists.

37d. In law, civil servants convicted of corruption are prohibited from future government employment.

**YES** | NO

**Comments:**

The Civil Service Law prohibits any persons convicted of corruption to occupy a public or administrative function.

**References:**

Law 188/1999 on the Civil Servant Statute, Art. 50, republished in the Official Gazette (Monitorul Oficial), no. 251, March 22, 2004

**YES:** A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

**NO:** A NO score is earned if no such rules exist.

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### 38. Is the law governing the administration and civil service effective?

69

38a. In practice, civil servants are protected from political interference.

100 | 75 | **50** | 25 | 0

**Comments:**

The Civil Service Code of Conduct demands public officials to be impartial, neutral and objective while exercise their duties, but it also imposes on them an obligation of obedience, loyalty to their superiors and secrecy in regard to certain public affairs. The application of these principles is not very harmonious and are difficult to put in practice. The tendency towards professionalism in state structures had been initiated, but numerous arbitrary removals still occur.

**References:**

The Stability of the Public Positions” – debate organized by Public Policy Institute (IPP–Institutul pentru Politici Publice), February 2, 2006, Bucharest, [www.ipp.ro](http://www.ipp.ro)

**100:** Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

**75:**

**50:** Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

**25:**

**0:** Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

38b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | **50** | 25 | 0

**Comments:**

The previous government had approved a law introducing public competition to high civil services places, which did not work,

because the result of competition followed almost always closely the political will of the government.

**References:**

Illegal Civil Servant Promotions -, the daily newspaper “Evenimentul Zilei”, November 24, 2005, [www.evz.ro](http://www.evz.ro);  
The Report of the Centre for Legal Resources (CRJ–Centrul de Resurse Juridice): “The Decentralized Corruption”, 2005, [www.crj.ro](http://www.crj.ro);  
Daily newspaper “Evenimentul Zilei”, November 24, 2005

**100:** Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

**25:**

**0:** Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

38c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | **50** | 25 | 0

**Comments:**

Recruitment based on political ties, friendship and family is still a very common practice in local government and administration.

**References:**

The Report of Centre for Legal Resources (CRJ–Centrul de Resurse Juridice): “The Decentralized Corruption”, 2005, [www.crj.ro](http://www.crj.ro)

**100:** Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

**75:**

**50:** Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

**25:**

**0:** Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

38d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

**Comments:**

Although the civil servants have a job description, it is not put always in practice, some tasks are accumulated or transferred from one public official to another, according to the needs of the service branch or department.

**References:**

The central and local media often report about the inobservance of civil servant job descriptions.

**100:** Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

**75:**

**50:** Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

**25:**

**0:** Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

38e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

**Comments:**

Generally, civil servant bonuses constitute only a small fraction of total pay, but more of public officials can, by law, give them bonuses and use this procedure. There is neither a job evaluation system nor any other mechanism to prevent overgranting of bonuses.

**References:**

The Future of the Civil Servant in Romania", debate organized by Public Policy Institute (IPP–Institutul pentru Politici Publice), April 6, 2005, [www.ipp.ro](http://www.ipp.ro)

**100:** Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

**75:**

**50:** Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

**25:**

**0:** Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

38f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

**Comments:**

Yearly, the National Agency of Civil Servants (ANFP–Agentia Nationala a Functionarilor Publici) publishes a report that contains the number of authorized civil service positions along with the number of positions actually filled.

**References:**

The website of National Agency of Civil Servants, [www.anfp-map.ro](http://www.anfp-map.ro)

**100:** The government publishes such a list on a regular basis.

**75:**

**50:** The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

**25:**

**0:** The government rarely or never publishes such a list, or when it does it is wholly incomplete.

38g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

**Comments:**

Although the independent redress mechanism for the civil service does not exist, the judicial redress of administrative acts works in the most situations and over the last years public services and government paid a lot of money for reparations and damages.

**References:**

The central and local media often report about this subject.

**100:** The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

**75:**

**50:** The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

**25:**

**0:** The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

38h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

**Comments:**

The government has almost always paid civil servants in time.

**References:**

Report of National Agency of Civil Servants (ANFP–Agentia Nationala a Functionarilor Publici) on remuneration of civil servants, 2005:  
[www.anfp-map.ro/strategii\\_rapoarte\\_studii.php?sectiune=Studii&view=25&year=2005](http://www.anfp-map.ro/strategii_rapoarte_studii.php?sectiune=Studii&view=25&year=2005)

**100:** In the past year, no civil servants have been paid late.

**75:**

**50:** In the past year, some civil servants have been paid late.

**25:**

**0:** In the past year, civil servants have frequently been denied due pay.

38i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

**References:**

Local media would cover such an event if it occurred.

**100:** A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

**75:**

**50:** A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

**25:**

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

### 39. Are there regulations addressing conflicts of interest for civil servants?

79

39a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

**References:**

Law 161/2003 on Certain Steps for Assuring Transparency in Performing High Official Positions, Public and Business Positions, for Prevention and Sanctioning Corruption, Art. 72

**YES:** A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

**NO:** A NO score exists if no such requirements exist in regulation or law.

39b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

**References:**

Law 188/1999 on the Civil Servant Statute (the Civil Service Law), Art. 79, republished in the Official Gazette (Monitorul Oficial), no. 251, March 22, 2004 provisions that civil servants cannot be employed for three years after leaving the civil service corps by private companies that they have been monitoring or controlling while in office.

**YES:** A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

**NO:** A NO score is earned if no such restrictions exist.

39c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

**Comments:**

The Civil Service Code of Conduct prohibits gifts and other advantages offered to the public officials.

**References:**

Law no. 7/2004 of Civil Service Code of Conduct, Art. 14

**YES:** A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

**NO:** A NO score is earned if there are no such guidelines or regulations.

39d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

**References:**

There are no mechanisms to monitor the civil servants who enter the private sector after leaving the government sector.

**100:** The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

**75:**

**50:** The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

**25:**

**0:** The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, many public officials receive gifts or even money.

**References:**

The local and central media often cover the petty corruption” of civil servants.

**100:** The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50:** The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

**25:**

**0:** The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

39f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

**References:**

National media have reported some cases of incompatibilities in the service of the civil servants.

**100:** The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

**75:**

**50:** The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

**25:**

**0:** Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

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#### 40. Can citizens access the asset disclosure records of senior civil servants?

100

40a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

**Comments:**

Civil servants are obliged to present a patrimonial declaration and an interest declaration to the direct superior. For the high civil servants, the declarations are immediately made public on the website of their institution.

**References:**

The Government Emergency Ordinance no. 14/2005 regarding the wealth declarations;  
Law 115/1996 regarding the wealth declarations, Arts.2 and. 4

**YES:** A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

**NO:** A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

40b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Almost always, assets of high civil servants are available on website of the institution where they work and/or the website of the National Agency of Civil Servants (ANFP–Agentia Nationala a Functionarilor Publici): [www.anfp-map.ro](http://www.anfp-map.ro)

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

40c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

In practice, access of the asset disclosure records of senior servants is free.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## IV-2. Whistle-blowing Measures

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41. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

88

41a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

**YES** | NO

**References:**

Law 571/2004 regarding on the whistle-blowing measures, Arts. 4(d), 5

**YES:** A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

**NO:** A NO score is earned if there are no legal protections for public-sector whistleblowers.

41b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

**Comments:**

In practice, private or public sector employees who report corruption face sometimes difficulties in their jobs. Much depends on individual civil servants, on the context, and on opportunities and circumstances.

**References:**

The audit report of the Freedom House: "The anticorruption policy of the Romanian Government", 2005, [www.just.ro/files/lupta\\_anti\\_coruptie/FH\\_audit\\_EN\\_16\\_031.pdf](http://www.just.ro/files/lupta_anti_coruptie/FH_audit_EN_16_031.pdf)

**100:** Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

**75:**

**50:** Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

**25:**

**0:** Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

41c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

**YES** | NO

**References:**

The Procedure Penal Code does references about citizens who report great cases of corruption or abuse of resources and they could be protected from recrimination, Art. 262;  
Law 78/2000 with changes introduces by Law 521/2004 on prevention the corruption facts

**YES:** A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

**NO:** A NO score is earned if there are no legal protections for private-sector whistleblowers.

41d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

**References:**

Central media reported on some private sector employees who denounced cases of officials' corruption and who were protected from recrimination.

**100:** Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

**75:**

**50:** Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

**25:**

**0:** Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

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42. Is there an effective internal mechanism (i.e. phone hotline, e-mail address, local office) where civil servants can report corruption?

75

42a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

**References:**

There is the General Anti-Corruption Directorate (Directia Generala Anticoruptie) subordinated to the Ministry of Administration and Internal Affairs;  
see also Law no. 161/2005 regarding the steps for preventing corruption in the Ministry of Administration and Internal Affairs, phone hotline 0800 806 806

**100:** The agency/entity has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

42b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

The General Anti-Corruption Directorate (Directia Generala Anticoruptie) receives a special budget from the Minister of Administration and Internal Affairs; see <http://www.mai.gov.ro/index1519.htm>

**100:** The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

42c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

The General Anti-Corruption Directorate (Directia Generala Anticoruptie) is a new mechanism and the its results are not relevant; Daily newspaper, Libertatea”, mai 17, 2006, www.libertatea.ro

**100:** The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

42d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

**References:**

Law no. 161/2005, Government Emergency Ordinance no. 120/2005 regarding the function the General Anti-Corruption Directorate (Directia Generala Anticoruptie)

**100:** When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

**75:**

**50:** The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

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81  
IV-3. Procurement

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43. Is the public procurement process effective?

78

43a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

**References:**

Government Emergency Ordinance 34/2006 concerning the award of procurement agreements and of concession agreements for public works and services, Arts. 66-69

**YES:** A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private gain for public procurement officials.

**NO:** A NO score is earned if no such rules exist.

43b. In law, there is mandatory professional training for public procurement officials.

**YES** | NO

**Comments:**

The Public Procurement Directorate (Directia de Achizitii Publice), resulting from a restructuring within the Ministry of Finances, is responsible for drafting procurement legislation, supporting policy development, providing procurement advice to contracting entities, ensuring training and capacity-building.

**References:**

Government Decision no. 208/2005 regarding to organisation and operation of the Ministry of Public Finances, Arts. 51; 64; 65; 66

**YES:** A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

**NO:** A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, or voluntary.

43c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | **25** | 0

**Comments:**

In most cases, it is difficult to ascertain if a public procurement official has any sort of interest in compromising with, or interest in one of the tendering proposals, because there is no effective monitoring of assets and interests.

**References:**

The Report of the Centre for Legal Resources: "The Decentralized Corruption", 2005, [www.crj.ro](http://www.crj.ro);

**100:** Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

**75:**

**50:** Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

**25:**

**0:** Conflict of interest regulations do not exist, or are consistently ineffective.

43d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

**References:**

There is no such law.

**YES:** A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

**NO:** A NO score is earned if no such mandate exists.

43e. In law, major procurements require competitive bidding.

YES | NO

**References:**

Government Emergency Ordinance 34/2006 concerning the award of procurement agreements and of concession agreements for public works and services, Art. 3

**YES:** A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

**NO:** A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

43f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

**References:**

The single source procedure may be used freely only for advertising below the 2, 000 euro (US\$2,618) threshold; Art. 2 of the Government Emergency Ordinance 34/2006 concerning the award of procurement agreements and of concession agreements for public works and services

**YES:** A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

**NO:** A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

43g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

**YES** | NO

**References:**

Government Emergency Ordinance 34/2006, Arts. 155, 277 (3)

**YES:** A YES score is earned if there is a formal appeal process for unsuccessful bidders.

**NO:** A NO score is earned if no such process exists.

43h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

**YES** | NO

**References:**

Government Emergency Ordinance 34/2006, Art. 255

**YES:** A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

**NO:** A NO score is earned if no such process exists.

43i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

**YES** | NO

**References:**

Government Emergency Ordinance 34/2006, Art. 180

**YES:** A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

**NO:** A NO score is earned if no such process exists.

43j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | **50** | 25 | 0

**References:**

Sometimes the central media report on the mechanisms used to infringe the law : when a company is precluded from participating in procurement bids for a limited period of time, there are always ways of circumventing that interdiction.

**100:** A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

**75:**

**50:** A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

**25:**

**0:** There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

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#### 44. Can citizens access the public procurement process?

100

44a. In law, citizens can access public procurement regulations.

**YES** | NO

**References:**

Government Emergency Ordinance 34/2006, Art. 215;  
Law no. 544/2001 on free access to public interest information

**YES:** A YES score is earned if procurement rules are, by law, open to the public.

**NO:** A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

44b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

**References:**

Government Emergency Ordinance 34/2006, Art. 47

**YES:** A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

**NO:** A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

44c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

The citizens have an easy access by electronic information system for dissemination of procurement, contract information, collection and compilation of procurement statistics and other official documentation;  
See: Romania-Public Procurement System Assessment, June 2005" – The Report of Support for Improvement in Governance and Management (SIGMA), a joint initiative of the OECD and European Union: [www.sigmaweb.org/document/](http://www.sigmaweb.org/document/)

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Procurement regulations are free on the internet:

1. see the website of the National Authority of According to Regulation the Public Procurement, [www.anrmap.ro](http://www.anrmap.ro);
2. Official website of Public Procurements (SEAC–Sistemul Electronic de Achizitii Publice), [www.e-licitatie.ro](http://www.e-licitatie.ro)

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

44e. In practice, major public procurements are widely advertised.

100 | 75 | 50 | 25 | 0

**References:**

The Government Emergency Ordinance 34/2006 sets standard for common advertising rules (Arts. 47; 58);

Tender announcements are published on:

1. the Official Site of Public Procurements ([www.e-licitatie.ro](http://www.e-licitatie.ro));
2. Website of the National Authority of According to Regulation the Public Procurement ([www.anrmap.ro](http://www.anrmap.ro));
3. Official Gazette (Monitorul Oficial), Part IV, Public Procurement.

**100:** There is a formal process of advertising public procurements. This may include a government Web site, newspaper advertising, or other official announcements. All major procurements are advertised in this way.

**75:**

**50:** There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective.

**25:**

**0:** There is no formal process of advertising major public procurements or the process is superficial and ineffective.

44f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

**References:**

The results of major public procurement bids are accessible on the Official Site of Public Procurements (SEAC–Sistemul Electronic de Achizitii Publice): [www.e-licitatie.ro](http://www.e-licitatie.ro);  
Website of the National Authority for Regulating and Supervising Public Procurements (ANRMAP– Autoritatea Națională pentru Reglementarea și Monitorizarea Achizițiilor Publice): [www.anrmap.ro](http://www.anrmap.ro)

**100:** Records of public procurement results are publicly available through a formal process.

**75:**

**50:** Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

**25:**

**0:** This information is not available to the public through an official process.

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## IV-4. Privatization

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### 45. Is the privatization process effective?

83

45a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

**References:**

Law 137/2002 on Actions to Accelerate Privatization Process, Art. 5(3) stipulated that no individuals or legal entities, Romanian or foreign, may take part in the privatization process if, having entered into share sale-purchase contracts with the public institution involved, such contracts were cancelled ex nunc for causes attributable to them alone, by a definitive and irrevocable Court or Arbitrage decision or as a consequence of the subsequent conditions stipulated in the shares sale-purchase contracts, as well as those that have outstanding budgetary debts.

**YES:** A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

**NO:** A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

45b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

**Comments:**

There are specific provisions only for the privatization of commercial banking companies.

**References:**

Law no. 83/1997 on the privatization of commercial banking companies in which the State are shareholder, Art. 6;  
Law 161/2003 for ensuring the transparency of some public dignities, functions and in the business environment, preventing and sanctioning the corruption, Art. 94 (1,2)

**YES:** A YES score is earned if there are formal regulations defining and regulating conflicts of interest for government officials involved in privatization.

**NO:** A NO score is earned if there are no such formal regulations.

45c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | **50** | 25 | 0

**Comments:**

Oftentimes, MPs are involved in privatization processes. The media recently discovered that the head of the Chamber of Deputies was involved in the privatization of BCR (Romanian Commercial Bank).

**References:**

See the monitoring of interest conflicts made by these Romanian organizations: [www.ipp.ro](http://www.ipp.ro); [www.crj.ro](http://www.crj.ro); [www.sar.rog.ro](http://www.sar.rog.ro)

**100:** Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

**75:**

**50:** Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

**25:**

**0:** Conflict of interest regulations do not exist, or are consistently ineffective.

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## 46. Can citizens access the terms and conditions of privatization bids?

75

46a. In law, citizens can access the terms and conditions of privatization bids.

YES | NO

**Comments:**

Although Art 1 of the Law no. 137/2002 on Actions to Accelerate Privatization with changes introduced till 2004, ensures the transparency of the privatization process, not all conditions of privatization bids are published in the national newspaper or on the website of the Authority for State Assets Recovery, [www.avas.gov.ro](http://www.avas.gov.ro). Citizens can access the terms and conditions of privatization bids post-factu, by Law no. 544/2001, regarding the free access to the information of public interest.

**References:**

Law no. 137/2002 on Actions to Accelerate Privatization, with changes introduced till 2004, ensuring the transparency of the privatization process, Art.1;  
Law no. 544/2001 regarding the free access to the information of public interest

**YES:** A YES score is earned if there is a formal process of publishing the details of privatization bids that makes information available to all citizens.

**NO:** A NO score is earned if there is no formal publication process, or if any citizens are excluded by law from accessing this information.

46b. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

**References:**

Government Emergency Ordinance no 26/ 2004 regarding privatization, Art. 11;  
The results of privatization decisions are published in Official Gazette (Monitorul Oficial) and on the website of Authority for State Assets Recovery (AVAS -Autoritatea pentru Valorificarea Arhivelor Statului): [www.avas.gov.ro](http://www.avas.gov.ro)

**YES:** A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

**NO:** A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

46c. In practice, citizens can access the terms and conditions of privatization bids within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Over the last five years, about 20 pieces of legislation were enacted, which modify the rules on privatizations (Law 137/2002, Government Emergency Ordinance 208/2002, Government Emergency Ordinance 8/2003, Law 540/2003, Law 556/2003, Law 569/2003, Government Emergency Ordinance 27/2004, Government Emergency Ordinance 34/2004, Government Emergency

Ordinance 45/2004, Government Emergency Ordinance 49/2004, Government Ordinance 36/2004, Law 318/2004, Government Ordinance 80/2004, Law 385/2004, Law 43/2004, Law 484/2004, Government Emergency Ordinance 119/2004. These laws did little to address the main problem with respect to diminishing the possibility of corruption in privatization transactions: the lack of transparency. According to the Freedom House anticorruption report 2005, the professional practitioners who have dealt extensively with the Authority for State Assets Recovery have repeatedly complained that an overwhelming majority of concluded privatization agreements are confidential and the content is not disclosed to the public.

**References:**

Freedom House, Inc., "Anticorruption Policy of the Romanian Government Assessment Report", commissioned by the Romanian Ministry of Justice, 2005, [www.just.ro](http://www.just.ro);  
Law 544/2001 regarding the free access to the information of public interest, Art. 7 provisions disclosure the information within 30 days; however, most of the privatization documents are confidential.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

46d. In practice, citizens can access the terms and conditions of privatization bids at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

It is very difficult for an interested buyer to obtain information on those companies, which are in the privatization agency's portfolio (at present, the Authority for State Assets Recovery (AVAS — Autoritatea pentru Valorificarea Arhivelor Statului) has in its portfolio only 2percent of number of companies, as compared to 1992 when Romanian privatization agency was formally established). The privatization legislative frame does not provisions clear transparency requirement for each and every privatization, such as requiring the disclosure of all privatization agreements and all related documents. For potential buyers, the cost of documents related of terms and conditions of privatization bids depend of the transaction and other conditions.

**References:**

Citizens could access the terms and conditions of privatization bids only by Law 544/2001 regarding the free access to the information of public interest, but more of the privatization documents are confidential and are excluded by this law. Art. 9 of the law 544/2001 provisions that only the photocopying services must be paid.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## Category V. Oversight and Regulation

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### V-1. <sup>91</sup>National Ombudsman

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47. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

47. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

**YES** | NO

**Comments:**

The agency is called People's Advocate (Avocatul Poporului).

**References:**

Constitution, Arts. 58-60;

Law no.35/1997 On the Organization and Functioning of the Institution of the People's Advocate – Republished in the Official Gazette (monitorul Oficial), No. 844, September

**YES:** A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

**NO:** A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

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48. Is the national ombudsman effective?

82

48a. In law, the ombudsman is protected from political interference.

YES | NO

**References:**

Law no.35/1997 On the Organization and Functioning of the Institution of the People's Advocate (Avocatul Poporului), Art.2. provisions that People's Advocate cannot be subjected to any imperative or representative mandate and no one can compel it to obey any instructions or order. By law, the Romanian ombudsman is an autonomous public authority, independent of any public authority.

**YES:** A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

48b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

**References:**

People's Advocate (People's Advocate) is appointed for five years by the legislative. The U.S. Department of State remarks in the Country Reports on Human Rights Practices – 2005 (Released by the Bureau of Democracy, Human Rights, and Labor March 8, 2006) that the Romanian Ombudsman has limited power and independence from the government".

**100:** This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

**75:**

**50:** This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

**25:**

**0:** This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

48c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**References:**

The head of ombudsman has so far never been removed. By law, Art 9 of the Law no.35/1997, the removal is as a result of violation of the Constitution and laws, shall be decided by Chamber of Deputies and Senate, in joint session, with a majority vote of the present senators and deputies, at the proposal of the Standing Bureau of both Chambers of Parliament, based on the joint report of the juridical committees of both Chambers of Parliament.

**100:** The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

**75:**

**50:** The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

**25:**

**0:** The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

48d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

People's Advocate has some 100 budgeted staff and 15 local offices – see the web site of the institution: [www.avp.ro](http://www.avp.ro)

**100:** The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

48e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

**References:**

Regulations from 17 April 2002 on the Organization and Functioning of the Institution of the Advocate of the Peoples, Art. 32, Republished in the Official Gazette (Monitorul Oficial) no. 922, October 11, 2002;

NOTE\*: SIGMA: Support for Improvement in Governance and Management, A joint initiative of the OECD and the European Union

**100:** Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

48f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

The Institution of People’s Advocate has its own budget, which is part of the State budget. The annual budget laws may approve a fund at the disposal of the ombudsman, for granting financial support.

Law no.35/1997 and the annual Laws of the State Budget, Art. 36, [www.gov.ro](http://www.gov.ro)

**100:** The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

48g. In practice, the agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

**References:**

The ombudsman makes publicly available reports on the website of the Romanian Ombudsman [www.avp.ro](http://www.avp.ro) and the website of the two Chambers of Parliament, [www.cdep.ro](http://www.cdep.ro); [www.senat.ro](http://www.senat.ro)

**100:** The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

**75:**

**50:** The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

**25:**

**0:** The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

48h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

**References:**

Most of the investigations of the national ombudsman are published on the website of the institution: [www.avp.ro](http://www.avp.ro). By law, People's Advocate (Avocatul Poporului) has the right to conduct its own inquiries, to request from the public administration authorities any information or documents necessary to the inquiry, to hear and take depositions from the chief-officials of the public administrative authorities or from any civil servant who may provide useful information for the resolution of the complaint (Art. 22 of the Law no. 35/1997)

**100:** The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

**75:**

**50:** The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

48i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**References:**

The Ombudsman has no legal prerogative to impose penalties on offender; Law 35/1997, Art. 21 provisions that through his recommendations, People's Advocate notifies the public administrative authorities about the illegality of the administrative acts or facts. The silence of the public administrative bodies and the delay in issuing acts are assimilated to administrative acts." On the other hand, where a public administrative authority or civil servant does not remove such illegality within 30 days since the notification, the ombudsman shall address to the hierarchically superior administrative authority, and the latter shall inform it on the measures that have been taken, within 45 days of the notification.

**100:** When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

**75:**

**50:** The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

48j. In practice, the government acts on the findings of the agency (or agencies).

100 | 75 | 50 | **25** | 0

**References:**

The head of People's Advocate (Avocatul Poporului), Ioan Muraru said for the weekly magazine, "22", that government did not take into account the finding of the ombudsman, "22", September 6-12, 2005

<http://www.revista22.ro/html/index.php?nr=2005-09-07&art=2012>

**100:** Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

**75:**

**50:** In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

**25:**

**0:** Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

48k. In practice, the agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | **75** | 50 | 25 | 0

**References:**

People's Advocate (Avocatul Poporului) acts on citizen complains within one month, according to the Annual Reports and the public declarations of the head of the Romanian Ombudsman: [www.avp.ro](http://www.avp.ro)

**100:** The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

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#### 49. Can citizens access the reports of the ombudsman?

100

49a. In law, citizens can access reports of the ombudsman(s).

YES | NO

**References:**

The Annual Reports are on the website of the ombudsman and on the websites of the parliament: [www.avp.ro](http://www.avp.ro); [www.cdep.ro](http://www.cdep.ro); [www.senat.ro](http://www.senat.ro);  
Regulations from April 17, 2002 on the Organization and Functioning of the Institution of the People's Advocate (Avocatul Poporului), Art. 4

**YES:** A YES score is earned if all ombudsman reports are publicly available.

**NO:** A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

49b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

The general reports, the statistics of complains, the opinions expressed by the People's Advocate (Avocatul Poporului) on the objections of unconstitutionality, the investigations of the ombudsmen and the legislative recommendations are on the web site of the respective institutions. The annual report is made public immediately by Official Gazette (Monitorul Oficial), after it is presented in the Parliament.

**100:** Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Reports take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

The reports and other information for the citizens are free on the website of the ombudsman: [www.avp.ro](http://www.avp.ro)

**100:** Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## V-2. Supreme Audit Institution

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50. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

50. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

**Comments:**

The agency is called the Court of Audit (Curtea de Conturi), which is the highest body for reviewing the legality, economy, efficiency and effectiveness of public expenditure.

**References:**

Constitution, Art. 40 provisions that the Court of Audit exercises control over the formation, administration, and use of the financial resources of the State and public sector.

**YES:** A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

**NO:** A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

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## 51. Is the supreme audit institution effective?

88

51a. In law, the supreme audit institution is protected from political interference.

YES | NO

**Comments:**

According to the Constitution, the members of the Court of Audit (Curtea de Conturi) are independent in exercising their term of office and irremovable through its duration.

**References:**

Constitution, Art. 40(4);

Law no. 94/1992 on the Organization of the Court of Audit, Art. 1, republished in the Official Gazette (Monitorul Oficial), no. 116, March 16, 2000

**YES:** A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

51b. In practice, the head of the agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**Comments:**

The removal without relevant justifications is very complicated in Romania. The president of the Court is appointed of the Parliament for six years and he could be removed only by the Parliament.

**References:**

Law no. 94/1992 on the Organization of the Court of Audit (Curtea de Conturi), Art. 109 (3), republished in the Official Gazette (Monitorul Oficial), no. 116, March 16, 2000

**100:** The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

**75:**

**50:** The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

**25:**

**0:** The director of the agency can be removed at the will of political leadership.

51c. In practice, the agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

The Court of Audit has a permanent staff of some 1,000, and 75 percent of these are assigned to audit tasks.

**References:**

See [www.rcc.ro](http://www.rcc.ro);

Constitution, Art. 40(4);

Law no. 94/1992 on the Organization of the Court of Audit (Curtea de Conturi), Arts. 8,10, republished in the Official Gazette (Monitorul Oficial), no. 116, March 16, 2000

**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

51d. In practice, agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

**References:**

According to the SIGMA\* Report on Romania External Audit Assessment, June 2005", "audit work is performed in a fair and factual manner" – <http://www.sigmaweb.org/document/>;  
Note\*: SIGMA, Support for Improvement in Governance and Management, A joint initiative of the OECD and the European Union;  
Some features from central media criticized a few decisions of the Court of Audit (daily newspaper "Averea", July 7, 2005 for "Dracula" scandal, daily newspaper "Cotidianul", July 3, 2006, for the Eximbank deal, etc.)

**100:** Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

51e. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

The draft budget is adopted by the Court of Audit (Curtea de Conturi) and is sent to the government.

**References:**

See the Annual of the State Budget, [www.gov.ro](http://www.gov.ro)

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

51f. In practice, the agency makes regular public reports.

100 | 75 | 50 | 25 | 0

**References:**

Art. 40 (2) of the Constitution provisions that the Court of Audit (Curtea de Conturi) shall annually report to Parliament on the accounts of the national public budget administration of the previous budgetary year, including cases of mismanagement. The annual reports can be found on sites of the Court, [www.rcc.ro](http://www.rcc.ro) or the sites of the two Chambers of Parliament, [www.cdep.ro](http://www.cdep.ro); [www.senat.ro](http://www.senat.ro)

**100:** The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

**75:**

**50:** The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

**25:**

**0:** The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

51g. In practice, the government acts on the findings of the agency.

100 | 75 | 50 | 25 | 0

**Comments:**

The Court of Audit (Curtea de Conturi) has audit and jurisdictional powers on acts of a specific nature. In both cases, decisions of the court are binding for the government.

**References:**

Law no. 94/1992 on the Organization of the Court of Audit, Art. 20 (1) and Art 17 ( c), republished in the Official Gazette (Monitorul Oficial), no.16, March 16, 2000

**100:** Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

**75:**

**50:** In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

**25:**

**0:** Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

51h. In practice, the supreme audit institution is able to initiate its own investigations.

100 | 75 | **50** | 25 | 0

**References:**

Law no. 94/1992 on the Organization of the Court of Audit (Curtea de Conturi), Art. 66 and Art. 122 (m), republished in the Official Gazette (Monitorul Oficial), no.116, March 16, 2000

**100:** The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

**75:**

**50:** The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

**25:**

**0:** The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

---

## 52. Can citizens access reports of the supreme audit institution?

100

52a. In law, citizens can access reports of the agency.

**YES** | NO

**References:**

Law no. 94/1992 on the Organization of the Court of Audit (Curtea de Conturi), Art. 3(2), republished in the Official Gazette (Monitorul Oficial), no. 116, March 16, 2000. The reports of the Court are on the web site of the institution: [www.rcc.ro](http://www.rcc.ro)

**YES:** A YES score is earned if all supreme auditor reports are available to the general public.

**NO:** A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

52b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Reports are available for free on the website of the Court of Audit (Curtea de Conturi): [www.rcc.ro](http://www.rcc.ro)

**100:** Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Reports take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Reports are available for free on the website of the Court of Audit (Curtea de Conturi): [www.rcc.ro](http://www.rcc.ro)

**100:** Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

---

### 53. In law, is there a national tax collection agency?

100

53. In law, is there a national tax collection agency?

YES | NO

#### Comments:

The National Agency for Fiscal Administration (ANAF—Agentia Nationala de Administrare Fiscala) is the service of the Ministry of Finance for the management and collection of income taxes, taxes on real estate and general consumption taxes, in accordance with the policy of the government

#### References:

The Government Decisions No. 208/2005 and No 1269/2005 (Hotariri de guvern)

**YES:** A YES score is earned if there is a national agency formally mandated to collect taxes.

**NO:** A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

---

### 54. Is the tax collection agency effective?

100

54a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

#### Comments:

The agency has a central office in Bucharest, as well as territorial agencies. The central structure has one direction, four direction staff offices, and 17 general directions.

#### References:

The website of the National Agency for Fiscal Administration (ANAF—Agentia Nationala de Administrare Fiscala) <http://anaf.mfinante.ro/wps/portal>;

The website of the Ministry of Finance [www.mfinante.ro](http://www.mfinante.ro)

**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

54b. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

The National Agency for Fiscal Administration (ANAF—Agentia Nationala de Administrare Fiscala) receives regular funding directly from the Ministry of Finance.

**References:**

Government Decision No. 208/2005, Art. 1(3)

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

---

## 55. In practice, are tax laws enforced uniformly and without discrimination?

50

55. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

**References:**

Art. 56(2) of the Constitution provides that the legal taxation system must ensure a fair distribution of the tax burden.

**100:** Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

---

## 56. In law, is there a national customs and excise agency?

100

56. In law, is there a national customs and excise agency?

YES | NO

### References:

National Customs Authority;

Law 86/2006 regarding the Customs Code of Romania. The Romanian Customs Authority (ANV–Autoritatea Nationala a Vamilor) is subordinated to the National Agency for Fiscal Administration (ANAF–Agentia Nationala de Administrare Fiscala).

**YES:** A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

**NO:** A NO score is earned if that function is spread over several agencies, or does not exist.

---

## 57. Is the customs and excise agency effective?

100

57a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

### References:

The National Customs Authority (ANV–Autoritatea Nationala a Vamilor) has a central structure in Bucharest and local structures in airports, harbors, train stations and state borders; [www.customs.ro/vami/Main](http://www.customs.ro/vami/Main);

The National Customs Authority has six national departments and 10 regional directories.

<http://www.customs.ro/vami/Main?categPage=1&smallCategId=103>

**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

57b. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

The agency receives funding from the Ministry of Finance. The amount is established every year by the Ministry of Finance together with any agency with specific conventions, and must be approved by the Parliament.

**References:**

Government Decision 165/2005, Art. 26, regarding of organization of the National Customs Authority (ANV–Autoritatea Nationala a Vamilor)

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

---

58. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

58. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

**References:**

Although the Code of Conducts and Discipline of the Customs Staff provisions undiscriminating conduct” ([http://www.customs.ro/vami\\_en/Main?categPage=1&showCateg=1&categId=5939](http://www.customs.ro/vami_en/Main?categPage=1&showCateg=1&categId=5939)), national media often reported about discriminations, especially on the tax regimes on second-hand car imports.

**100:** Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

**75:**

**50:** Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

**25:**

**0:** Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

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## V-4. Financial Sector Regulation

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59. In law, is there a financial regulatory agency overseeing publicly listed companies?

100

59. In law, is there a financial regulatory agency overseeing publicly listed companies?

YES | NO

**Comments:**

The Romanian National Securities Commission (CNVM—Comisia Nationala de Valori Mobiliare) is an independent public authority in charge of supervising and regulating the market of securities and other financial instruments.

**References:**

Law no. 29/2004 regarding the capital market;  
Government Emergency Ordinance no. 25/2002 – approval of the Statute of the National Securities Commission;  
Law no. 514/2002 for approval the Government Emergency Ordinance no. 25/2002

**YES:** A YES score is earned if there is an agency tasked with overseeing publicly listed companies in the public interest and ensuring that disclosure rules are met.

**NO:** A NO score is earned if this function is spread over several agencies or does not exist.

---

60. Is the financial regulatory agency effective?

60a. In law, the financial regulatory agency is protected from political interference.

YES | NO

**References:**

Government Emergency Ordinance no. 25/2002 on the statute of the National Securities Commission (CNVM–Comisia Nationala de Valori Mobiliare):

- 1) Art 1(1) provisions that the Commission is an autonomous administrative authority, enjoying legal personality”;
- 2) Art. 1(3) stipulates that the Commission is subordinated to Parliament and shall submit reports through the Budget, Finance and Banks Commissions of the Senate and of the Chamber of Deputies.

**YES:** A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

60b. In practice, the agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

The National Securities Commission (CNVM–Comisia Nationala de Valori Mobiliare) has some 100 full-time staff members – [www.cnvmr.ro/ro/organigrama.htm](http://www.cnvmr.ro/ro/organigrama.htm)

**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

60c. In practice, the agency receives regular funding.

**References:**

The National Securities Commission (CNVM–Comisia Nationala de Valori Mobiliare) is integrally financed from supra-budgetary revenues. Article 13 (2) of the Statute of the National Securities Commission (the Government Emergency Ordinance no. 25/2002) provisions that the revenues of the Commission derives from: a quota of 0.08 percent of the value of the transactions carried out on any regulated market, incurred by the buyer, except for the regulated markets of the financial derivative instruments; a quota of 0.1percent of the value of the net assets charged for undertakings for collective placement in securities; a quota of 0.5 percent of the value of the public sale offers; a quota of 2 percent of the value of the public sale-take-over offers; fees or commissions for the transactions carried out on the regulated markets of the financial derivative instruments; fees and commissions charged for the operations for which the National Securities Commission issues an individual act; fees charged for the providing of services to supervised entities or to third parties; penalties provided by its regulations as patrimonial sanctions; legacies; publishing house, publicity, multiplication activities. The budget of the Commission is approved by the Parliament and it is published in the Official Gazette (Monitorul Oficial) of Romania, Part I

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

60d. In practice, when necessary, the financial regulatory agency independently initiates investigations.

**References:**

The National Securities Commission can order the submission of documents, reports or information, hearings, interdictions or suspensions of authorizations or activities, inquiries or other investigations, protective measures, as well as the removal or filing of documents or titles, the inalienability of certain goods or funds, disciplinary and administrative sanctions; Government Emergency Ordinance no. 25/2002, Art. 9(2) – approval of the Statute of the National Securities Commission (CNVM–Comisia Nationala de Valori Mobiliare)

**100:** When irregularities are discovered, the agency is aggressive in investigating and/or in cooperating with other investigative bodies.

**75:**

**50:** The agency starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

60e. In practice, when necessary, the financial regulatory agency imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**References:**

The Sanctioning Ordinances are published on the website of the National Securities Commission (CNVM–Comisia Nationala de Valori Mobiliare), [www.cnvmr.ro/ro/ordonantesanctionare2006.htm](http://www.cnvmr.ro/ro/ordonantesanctionare2006.htm);  
Government Emergency Ordinance no. 25/2002, Art. 9(2)- approval of the Statute of the National Securities Commission

**100:** When rules violations are discovered, the agency is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

**75:**

**50:** The agency enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partis

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## 61. Can citizens access the financial records of publicly listed companies?

100

61a. In law, citizens can access the financial records of publicly listed companies.

YES | NO

**References:**

Law 297/2004, Art. 2(6) regarding the capital market provisions that the National Securities Commission (CNVM–Comisia Nationala de Valori Mobiliare) Register is a public document

**YES:** A YES score is earned if the financial information of all publicly traded companies is required by law to be public.

**NO:** A NO score is earned if any category of publicly- owned or publicly-traded company is exempt from this rule, or no such rules exist.

61b. In practice, the financial records of publicly listed companies are regularly updated.

100 | 75 | 50 | 25 | 0

**References:**

The Public Register of the National Securities Commission (CNVM–Comisia Nationala de Valori Mobiliare) is regularly updated, according to the website of the Commission <http://www.cnvmr.ro/RCNVM/>

**100:** Publicly traded companies always disclose financial data, which is generally accurate and up to date.

**75:**

**50:** Publicly traded companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

**25:**

**0:** Financial data is not available, or is consistently superficial or otherwise of no value to investors.

61c. In practice, the financial records of publicly listed companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

**References:**

The financial records of publicly listed companies are audited according to international standards- see [www.cnvmr.ro/cons/index.htm](http://www.cnvmr.ro/cons/index.htm); [www.cnvmr.ro/ro/normeeuropene.htm](http://www.cnvmr.ro/ro/normeeuropene.htm)

**100:** Financial records of all public companies are regularly audited by a trained third party auditor using accepted international standards.

**75:**

**50:** Financial records of public companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

**25:**

**0:** Publicly traded companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

61d. In practice, citizens can access the records of disciplinary decisions imposed by the government on publicly-listed companies.

100 | 75 | 50 | 25 | 0

**References:**

Citizens have access to the disciplinary decisions on the website of the National Securities Commission (CNVM–Comisia Nationala de Valori Mobiliare): [www.cnvmr.ro/ro/ordonantesanctionare2006.htm](http://www.cnvmr.ro/ro/ordonantesanctionare2006.htm)

**100:** These records are freely available to all citizens through a formal official process.

**75:**

**50:** These records are available to all citizens, with some exceptions.

**25:**

**0:** These records are generally not available through official processes.

61e. In practice, citizens can access the financial records of publicly listed companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Annual financial reports and relevant material information are published on a regular basis and are available for public consultation of the website of the National Securities Commission (CNVM–Comisia Nationala de Valori Mobiliare).

**References:**

In practice, citizens have access to the financial records of publicly listed companies on the website of the National Securities Commission: [www.cnvmr.ro/RCNVM/](http://www.cnvmr.ro/RCNVM/)

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

61f. In practice, citizens can access the financial records of publicly listed companies at a reasonable cost.

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100 | 75 | 50 | 25 | 0

**Comments:**

Annual financial reports and relevant material information are published on a regular basis and available for public consultation of the website of the National Securities Commission (CNVM–Comisia Nationala de Valori Mobiliare).

**References:**

The access of the financial records of publicly listed companies is free at [www.cnvmr.ro/RCNVM/](http://www.cnvmr.ro/RCNVM/)

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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97  
V-5. Business Licensing and Regulation

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62. Are business licenses available to all citizens?

94

62a. In law, anyone may apply for a business license.

YES | NO

**Comments:**

The persons who were convicted cannot start a business.

**References:**

Law no.26/1990 regarding the Trade Register, Art. 21

**YES:** A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

**NO:** A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required.

62b. In law, a complaint mechanism exists if a business license request is denied.

**YES** | NO

**Comments:**

Decisions of the public administration can be brought in front of the administrative court.

**References:**

Law 554/2004 regarding of administrative litigation

**YES:** A YES score is earned if there is a formal process for appealing a rejected license.

**NO:** A NO score is earned if no such mechanism exists.

62c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | **75** | 50 | 25 | 0

**Comments:**

Over the last two years, the period of registering a small license was decreased to a maximum of 30 days.

**References:**

Discussions of some small businessmen;

Website of the National Agency for Small and Medium-Size Enterprises and Cooperatives (MIMMC- Agentia Nationala pentru Intreprinderi Mici si Mijlocii si Cooperatii),

[www.mimmc.ro/consultanta/inreg\\_afacere/](http://www.mimmc.ro/consultanta/inreg_afacere/)

**100:** Licenses are not required, or licenses can be obtained within roughly one week.

**75:**

**50:** Licensing is required and takes around one month. Some groups may be delayed up to a three months.

**25:**

**0:** Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

62d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

The fixed cost of registration for a small company is around 100 Euros (US\$130);  
Website of the National Agency for Small and Medium-Size Enterprises and Cooperatives (MIMMC- Agentia Nationala pentru Intreprinderi Mici si Mijlocii si Cooperatii):  
[www.mimmc.ro/consultanta/inreg\\_afacere/](http://www.mimmc.ro/consultanta/inreg_afacere/)

**100:** Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

**75:**

**50:** Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

---

63. Do businesses receive equitable regulatory treatment from the government?

75

63a. In law, basic business regulatory requirements for meeting health, safety, and environmental standards are transparent and publicly available.

YES | NO

**References:**

Constitution, Arts. 45, 135

**YES:** A YES score is earned if basic regulatory requirements for meeting health, safety, and environmental standards are publicly accessible and transparent.

**NO:** A NO score is earned if such requirements are not made public or are otherwise not transparent.

63b. In practice, business inspections by the government are carried out in a uniform and even-handed manner.

**Comments:**

Some companies receive privileges from the Government by special laws, and at the same time the Government does not apply the same rules for all companies.

**References:**

Immediate Measures to Increase Foreign Direct Investment in Romania” – report by the Foreign Investors Council, April 2006, Bucharest: [www.fic.ro/whitebook/whitebook.html](http://www.fic.ro/whitebook/whitebook.html)

**100:** Business inspections by the government (i.e. health, safety, or environmental inspections) are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

**75:**

**50:** Business inspections by the government (i.e. health, safety, or environmental inspections) are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

**25:**

**0:** Business inspections (i.e. health, safety, or environmental inspections) are routinely carried out by the government in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

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## Category VI. Anti-Corruption and Rule of Law

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### VI-1. <sup>91</sup>Anti-Corruption Law

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#### 64. Is there legislation criminalizing corruption?

100

64a. In law, attempted corruption is illegal.

YES | NO

**Comments:**

In law, attempted corruption is illegal.

**References:**

Criminal Procedure Code, Art. 20;  
Law no.278/2006

**YES:** A YES score is earned if corruption laws include attempted acts.

**NO:** A NO score is earned if this is not illegal.

64b. In law, extortion is illegal.

**YES** | NO

**Comments:**

Article 194 refers to Santaj". Extortion in general is criminalized by Article 211 of the Criminal Procedure Code.

**References:**

Criminal Procedure Code, Art. 194;  
Law no. 278/2006

**YES:** A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

**NO:** A NO score is earned if this is not illegal.

64c. In law, offering a bribe (i.e. active corruption) is illegal.

**YES** | NO

**Comments:**

In law, offering a bribe is illegal.

**References:**

Criminal Procedure Code, Art. 255;  
Law no 278/2006

**YES:** A YES score is earned if offering a bribe is illegal.

**NO:** A NO score is earned if this is not illegal.

64d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

**Comments:**

In law, receiving a bribe is illegal.

**References:**

Criminal Procedure Code, Art. 256;  
Law 278/2006

**YES:** A YES score is earned if receiving a bribe is illegal.

**NO:** A NO score is earned if this is not illegal.

64e. In law, bribing a foreign official is illegal.

YES | NO

**Comments:**

Law 27/2002 authorized the ratification of the Strasbourg Criminal Convention (January 27, 1999) regarding corruption. Romania did not ratify the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed on December 17, 1997. The Convention set an agreed standard for effective national laws to criminalize bribery of foreign officials in international business transactions, ensure strong penalties against such bribery and provide a basis for effective international judicial co-operation.

**References:**

Criminal Procedure Code, Art. 256;  
Law 278/2006;  
Law 27/2002 authorized the ratification of the Strasbourg Criminal Convention (January 27, 1999) regarding corruption

**YES:** A YES score is earned if bribing a foreign official is illegal.

**NO:** A NO score is earned if this is not illegal.

64f. In law, using public resources for private gain is illegal.

YES | NO

**Comments:**

In law, using public resources for private gain is illegal.

**References:**

Criminal Procedure Code, Arts. 257, 258

**YES:** A YES score is earned if using public resources for private gain is illegal.

**NO:** A NO score is earned if this is not illegal.

64g. In law, using confidential state information for private gain is illegal.

**YES** | NO

**References:**

Criminal Procedure Code, Art. 257

**YES:** A YES score is earned if using confidential state information for private gain is illegal.

**NO:** A NO score is earned if this is not illegal.

64h. In law, money laundering is illegal.

**YES** | NO

**Comments:**

In law, money laundering is illegal.

**References:**

Law no. 656/2002 on the prevention and sanctioning of money laundering with changes introduced by Law 230/2005; there are some connections in the Criminal Procedure Code.

**YES:** A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

**NO:** A NO score is earned if this is not illegal.

64i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

**Comments:**

In law, conspiracy to commit a crime is illegal.

**References:**

Criminal Procedure Code, Art. 167

**YES:** A YES score is earned if organized crime is illegal.

**NO:** A NO score is earned if this is not illegal.

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## VI-2. Anti-Corruption Agency

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65. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

65. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

**Comments:**

There is a government project of law for National Integrity Agency (Agentia pentru Integritate Nationala). For the moment (August 14, 2006) there is no central institution co-coordinating the various anti-corruption efforts. National Anti-corruption Directorate is structure with legal personality functioning with the Prosecutor's Office and attached to the High Court of Cassation and Justice (Inalta Curte de Casatie si Justitie).

**References:**

The Government Emergency Ordinance no. 43/2002 with changed introduced by Law no. 54/2006

**YES:** A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

**NO:** A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

## 66. Is the anti-corruption agency effective?

94

66a. In law, the agency (or agencies) is protected from political interference.

YES | NO

### References:

Government Emergency Ordinance no. 43/2002, Art.2 with changes introduced by Law no. 54/2006 provisions that the National Anti-corruption Directorate (Directia Nationala Anticoruptie) is independent in its relationship with the courts of justice and the prosecutor's offices attached to these, as well as in its relationship with the other public authorities, carrying out its functions on the basis of the law.

**YES:** A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

66b. In practice, the agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

### References:

The European Commission Monitoring Report, May 2006, noticed the quantity and quality of non-partisan investigations into allegations of high-level corruption have substantially increased compared to the previous period". Since October 2005, National Anti-corruption Directorate (Directia Nationala Anticoruptie) has investigated 14 high-level political figures from the opposition and ruling Coalition parties who either hold, or have held, Cabinet ranks or are MPs.

**100:** This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

**75:**

**50:** This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

**25:**

**0:** This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

66c. In practice, the head of the agency (or agencies) is protected from removal without relevant justification.

100 | 75 | **50** | 25 | 0

**References:**

There have been attempts in the Senate (February 2006) to change the nomination and revocation procedures for high level prosecutors. Some political analysts from Romania consider that the head of the National Anti-Corruption Directorate (Directia Nationala Anticoruptie) could be changed if the parliamentary majority is changed. In this situation the law would also be changed: [www.europalibera.org/news/ro/archives/2006/02/17.ASP](http://www.europalibera.org/news/ro/archives/2006/02/17.ASP);  
[www.europalibera.org/analysis/ro/archives/2006/02/17.ASP](http://www.europalibera.org/analysis/ro/archives/2006/02/17.ASP)

**100:** The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

**75:**

**50:** The director(s) can in some cases be removed through a combination of official or unofficial pressure.

**25:**

**0:** The director(s) can be removed at the will of political leadership.

66d. In practice, appointments to the agency (or agencies) are based on professional criteria.

**100** | 75 | 50 | 25 | 0

**References:**

According to the European Commission Monitoring Report, May 2006, there has been a clear qualitative improvement in the investigations conducted by the National Anti-Corruption Directorate (Directia Nationala Anticoruptie), notably by reopening investigations closed under the previous management team for unclear reasons".

**100:** Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

66e. In practice, the agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

According to the Government Emergency Ordinance no. 43/2002, as amended, the personnel structure and the positions number, are as it follows: 130 prosecutor positions; 170 police officer positions; 45 expert positions; 85 special auxiliary personnel positions; 80 administrative and economic personnel positions – [www.pna.ro/rum/frames.htm](http://www.pna.ro/rum/frames.htm)

**100:** The agency (or agencies) has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

**25:**

**0:** The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

66f. In practice, the agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

National Anti-corruption Directorate (Directia Nationala Anticoruptie) has, by law, financial independence, in the sense that the institution has its own state budget line, clearly defined in the budget of the Prosecutor's Office attached to the High Court of Cassation and Justice (Inalta Curret de Casatie si Justitie), which is the second fund appropriation entity.

**References:**

Government Emergency Ordinance no. 43/2002, Art. 4(3) with changes introduced by Law no. 54/2006. By law, a deposit of at least two million RON (US\$751,000) is annually constituted for actions regarding the organizing and ascertaining of flagrant corruption offences, at the disposal of the Chief Prosecutor of the National Anti-Corruption Directorate.

**100:** The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

66g. In practice, the agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

**References:**

Government Emergency Ordinance no. 43/2002, Art. 3(e) with changes introduced by Law no. 54/2006 provisions that the annual report on the National Anti-corruption Directorate's activity is submitting it to the Superior Council of Magistracy and to the Minister of Justice no later than February of the following year. The Minister of Justice will submit to the Parliament the conclusions on the activity report of the National Anti-Corruption Directorate (Directia Nationala Anticoruptie).

**100:** The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

**75:**

**50:** The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

**25:**

**0:** The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

66h. In practice, the agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

**Comments:**

Since October 2005, National Anti-corruption Directorate (Directia Nationala Anticoruptie) has a staff of about 100, including judges, lawyers, police officers, a number of public officials with executive positions in national and regional administrations as well as directors in private enterprises. During this period, the court passed initial convictions against 77 individuals based on earlier National Anticorruption Prosecutor's Office (the first name of Directorate) investigations and pronounced a further 102 final convictions.

**References:**

According to the European Commission Monitoring Report, May 2006, National Anti-Corruption Directorate has the staff, financial resources and training to conduct effective investigations into high-level corruption".

**100:** The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

**75:**

**50:** The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

**25:**

**0:** The agency (or agencies) lacks significant powers which limit its effectiveness.

66i. In practice, when necessary, the agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

**References:**

Government Emergency Ordinance no. 43/2002, Art.3 with changed introduced by Law no. 54/2006;  
Website of the National Anti-Corruption Directorate (Directia Nationala Anticoruptie), [www.pna.ro](http://www.pna.ro)

**100:** When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

**75:**

**50:** The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

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## 67. Can citizens access the anti-corruption agency?

88

67a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

The Criminal Procedure Code, Art. 276 provisions 20 days;  
Website of the National Anti-Corruption Directorate (Directia Nationala Anticoruptie), [/www.pna.ro/rum/frames.htm](http://www.pna.ro/rum/frames.htm)

**100:** The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues

can expect a resolution within a month.

**75:**

**50:** The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

67b. In practice, citizens can complain to the agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

**References:**

Many leaders of Romanian NGOs consider that citizens almost always complain without fear of recrimination.

**100:** Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

**75:**

**50:** Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

**25:**

**0:** Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

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94  
VI-3. Rule of Law

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68. Is there an appeals mechanism for challenging criminal judgments?

75

68a. In law, there is a general right of appeal.

YES | NO

**Comments:**

One of the principles of justice guaranteed by Constitution is that criminal proceedings shall provide all necessary safeguards for the defendant.

**References:**

Constitution, Art. 21(1)

**YES:** A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

**NO:** A NO score is earned if there is no such process.

68b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Constitution, Art. 21(3): all parties shall be entitled to a fair trial and a solution of their cases within a reasonable term". On the other hand, the president of the High Court of Cassation and Justice, Nicolae Popa, admitted that people file complaints because the judicial act is very "slow" as there are not enough judges; Central daily newspapers, March 10, 2006

**100:** Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

**75:**

**50:** Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

**25:**

**0:** Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

68c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

It depends on many details, but according to national and local media reports, the judicial acts are very slow, therefore also quite expensive;  
Daily newspaper Evenimentul Zilei”, May, 25, 2006: www. evz.ro

**100:** In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

**75:**

**50:** In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

**25:**

**0:** The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

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### 69. In practice, do judgments in the criminal system follow written law?

50

69. In practice, do judgments in the criminal system follow written law?

100 | 75 | **50** | 25 | 0

**Comments:**

Not all judgments follow the written law.

**References:**

This year, President Traian Basescu pointed many times to the high level of corruption” among magistrates. “The judicial system, created after 1990, is a mixture of economic and political interests. Those who created it are still fighting to maintain it,” declared the President on the annual forum of Superior Council of Magistrates (Consiliul Superior al Magistraturii), March 9, 2006

**100:** Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

**75:**

**50:** Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

**25:**

**0:** Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

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### 70. In practice, are judicial decisions enforced by the state?

100

70. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

**References:**

Criminal Procedure Code, Arts. 160 (2b), 163 (1), 164, 198

**100:** Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

**75:**

**50:** Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

**25:**

**0:** Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

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71. Is the judiciary able to act independently?

94

71a. In law, the independence of the judiciary is guaranteed.

YES | NO

**References:**

Constitution, Art. 124 provisions that Justice is impartial, and equal for all, and judges must be independent and subject only to the law.

**YES:** A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation and managing the budget of the courts ).

**NO:** A NO score is earned if there are no formal rules establishing an independent judiciary.

71b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

**References:**

Constitution, Art. 125;

Law 317/2004, Arts. 160 (2b), 163 (1), 164, 198, regarding to the Superior Council of Magistrates (Consiliul Superior al Magistraturii) with changes introduced by Law 247/2005;

Law 303/2004, Arts. 3(3) and 74(2), regarding the Magistrates Status with changes introduced by Law 247/2005

**100:** National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

**75:**

**50:** National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

**25:**

**0:** National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

71c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

**References:**

Law 304/2004, Arts. 10bis and 126(1b), regarding to the Judiciary Organization, with changes introduced by Law 247/2005;

Law 303/2004, Arts. 97(o) and 50 (5), regarding the Magistrates Status with changes introduced by Law 247/2005

**YES:** A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

**NO:** A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

71d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

**References:**

Law 303/2004, Arts. 1 and 2 regarding to the Magistrates Status, published in Official Gazette, no. 826, Part I

**YES:** A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

**NO:** A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

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## 72. Are judges safe when adjudicating corruption cases?

100

72a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

**YES** | NO

**References:**

Human rights watchdogs would have signaled such an occurrence.

**YES:** A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period.

**NO:** A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

72b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

**YES** | NO

**References:**

National media would have covered such an occurrence.

**YES:** A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period.

**NO:** A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work

on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

### 73. Do citizens have equal access to the justice system?

96

73a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

**Comments:**

There are some problems with Roma ethnic discrimination. Under Romanian anti-discrimination law, access to justice in cases of Roma discrimination was arbitrarily limited, since a decision by the National Council Combating Discrimination (CNCD–Consiliul National de Combatere a Discriminariilor) – the body in charge with implementation of Romanian anti-discrimination law – was final and no appeal on the merits of the case was possible. Further, access to the CNCD was difficult as there was only one office in the capital city. Finally, the CNCD was not able to award damages to victims; victims had to take a finding from the body to a court in order to receive compensation.

**References:**

Constitution, Art.21;

IHF Report 2006: Human Right in the OSCE Region (Romania 321):

[http://www.ihf-hr.org/viewbinary/viewdocument.php?download=1&doc\\_id=6859](http://www.ihf-hr.org/viewbinary/viewdocument.php?download=1&doc_id=6859).

**100:** Judicial decisions are not affected by racial or ethnic bias.

**75:**

**50:** Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

**25:**

**0:** Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

73b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

**Comments:**

Human rights organizations don't refer to this kind of discrimination in Romania.

**References:**

Constitution, Art.21

**100:** Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system.

**75:**

**50:** Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes.

**25:**

**0:** Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence.

73c. In practice, the state provides legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

**References:**

Constitution, Art. 24(2);  
Criminal Procedure Code, Art. 171;  
Civil Procedure Code, Art. 118

**100:** State-provided legal aid is basic, but well trained and effective in representing the rights of indigent defendants.

**75:**

**50:** State-provided legal aid is available, but flawed. Legal aid may be unavailable to some indigent defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

**25:**

**0:** State-provided legal aid is unavailable to most indigent defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

73d. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

**References:**

The monthly median income is of almost 250 Euros (US\$327), according the National Institute of Statistics (Institutul Nationala de Statistica): [www.insse.ro](http://www.insse.ro). Many lawyers consider the median income is enough to bring a legal suit, if it is a suit without wide-spreading implications.

**100:** In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

**75:**

**50:** In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

**25:**

**0:** The cost of engaging the legal system prevents middle class citizens from filing suits.

73e. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

**References:**

According to the National Agency for Small and Medium-Size Enterprises (ANIMMC- Agentia Nationala pentru Intreprinderi Mici si Mijlocii si Cooperatii), the small-size enterprises are able to stand readily to any type of competitive pressure and could afford a to bring a legal suit – <http://www.animmc.ro/animmc/>

**100:** In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

**75:**

**50:** In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

**25:**

**0:** The cost of engaging the legal system prevents small businesses from filing suits.

73f. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

**References:**

Constitution, Art.21;  
Law 304/2004, Art.6 regarding to the Judiciary Organization with changes introduced by Law 247/2005

**100:** Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

**75:**

**50:** Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

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## VI-4. Law Enforcement

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### 74. Is the law enforcement agency (i.e. the police) effective?

75

74a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

**Comments:**

In Romania, there are three types of law enforcement agencies, under the Ministry of Administration and Internal Affairs: Police, Gendarmerie and Border Police.

**References:**

Law 360/2002 of the Policeman Statute, Art.18, republished in the Official Gazette (Monitorul Oficial), March 7, 2005;  
Law of the Gendarmerie 550/2004, Art. 56

**100:** Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

74b. In practice, the agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

**Comments:**

Official complaints aside, the Ministry of Administration and Internal Affairs (which oversees the three types of law enforcement agencies in Romania – Police, Gendarmerie and Border Police) had a budget for 2006 of approximately 3.8 % of total GDP, or 1.9 billion euro. Romanian law enforcement agencies also receive financial support from the European Union.

**References:**

Over the past few months, a few local officials complained of the insufficient budget with which they are provided, according to the local media:

<http://www.monitorulneamt.ro/stiri/?editia=20060223&pagina=1&articol=2973>

**100:** The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

**75:**

**50:** The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

**25:**

**0:** The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

74c. In practice, the agency is protected from political interference.

100 | 75 | 50 | 25 | 0

**Comments:**

According to last Report of the Association for the Defense of Human Rights in Romania -Helsinki Committee (APADOR-CH – Asociația pentru Apărarea Drepturilor Omului în România – Comitetul Helsinki), there are no problems with political interference in the police problems, but the Report considers that the police continue to be a state within a state,” without control from outside the system.

**References:**

Constitution, Art. 40;

Human Rights Developments in Romania”, Report of the activities of the Romanian Helsinki Committee (APADOR-CH) in 2005 – [www.apador.org/en/index.htm](http://www.apador.org/en/index.htm)

**100:** The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

**75:**

**50:** The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

**25:**

**0:** The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

## 75. Can law enforcement officials be held accountable for their actions?

96

75a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

### Comments:

There is the General Anti-Corruption Directorate (Directia Generala Anticoruptie) subordinated to the Ministry of Administration and Internal Affairs.

### References:

Law no. 161/2005, regarding the steps for preventions corruption acts into the Minister of Administration and Internal Affairs; phone hotline 0800 806 806

**YES:** A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions.

**NO:** A NO score is earned if there is no such mechanism.

75b. In practice, the independent reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

### References:

The General Anti-Corruption Directorate (Directia Generala Anticoruptie) is a new mechanism and its results are not relevant yet; Daily newspaper, Libertatea", May 17, 2006, [www.libertatea.ro](http://www.libertatea.ro)

**100:** The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

75c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

**Comments:**

They are the General Anti-Corruption Directorate (Directia Generala Anticoruptie) subordinated to the Ministry of Administration and Internal Affairs and the National Anti-corruption Directorate, a structure with legal personality functioning within the Prosecutor's Office attached to the High Court of Cassation and Justice (Inalta Curte de Casatie si Justitie).

**References:**

Law no. 161/2005, Art. 13 (1b) of the Government Emergency Ordinance no.43/2002, with changes introduced by the Law 54/2006

**YES:** A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity is separate from the regular police department.

**NO:** A NO score is earned if no such agency/entity exists.

75d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

**References:**

The central media often covered the investigations initiate by the General Anti-Corruption Directorate (Directia Generala Anticoruptie) and the National Anti-Corruption Directorate (Directia Nationala Anticoruptie).

Cotidianul", July 31, 2006: [www.cotidianul.ro/index.php?id=6333&art=15802&cHash=0b302e9100](http://www.cotidianul.ro/index.php?id=6333&art=15802&cHash=0b302e9100);

"Ziua", July 4, 2006: <http://stiri.rol.ro/detaliiere.php?id=339565>

"Curierul National", June 8, 2006, [www.curierulnational.ro/?page=articol&editie=1176&art=76363](http://www.curierulnational.ro/?page=articol&editie=1176&art=76363)

**100:** When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

**75:**

**50:** The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

75e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

**References:**

Law no. 360/2002, Art. 55-65 of the Policeman Statute

**YES:** A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

**NO:** A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

75f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

**References:**

The central and local media often reported on the criminal investigations initiate against the police officials.

**100:** Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

**75:**

**50:** Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

**25:**

**0:** Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.