Asset disclosure and wealth assessment system in Romania: Lessons for Ukraine

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National Integrity Agency of Romania

The National Integrity Agency (ANI; Agenția Națională de Integritate) was established in 2007 as an autonomous administrative authority operating at the national level. ANI verifies wealth and interest statements, controls timely submission of asset declarations, oversees compliance with conflicts of interest and incompatibilities requirements. See structure of the ANI in the Annex to this note.

ANI conducts administrative investigations and is subject to judicial control. ANI undergoes an annual external independent audit. The annual budget of the ANI for 2015 was RON 36 million or about EUR 8 million (budget in 2014 – about EUR 4.3 million). The ANI has no regional offices.

ANI’s head and deputy heads are selected through an open competition by the National Integrity Council. They cannot be dismissed for political reasons before the expiration of their term of office, except for in case of a negative conclusion of the external audit conducted by a reputable firm (recently, Deloitte). The National Integrity Council is a special body set up to oversee ANI’s work and also to guarantee its independence. It consists of representatives of all parliamentary factions, civil society, etc.

ANI’s overall staff is 200 persons, but only 100 positions have actually been filled in, including 40 inspectors. This is explained by insufficient budget of the ANI. There are about 100 cases per inspector at any given time. Overall about 4,000 inspections are conducted annually. Inspectors have autonomous status and are operationally independent. They have either legal or economic background. Leadership of the ANI and heads of units cannot interfere with inspections. There is no specialization of inspectors; cases are distributed randomly. ANI does not engage external experts.

ANI concluded cooperation agreements with public agencies to obtain access to databases, e.g. population database, company register. All public agencies whose employees are supposed to submit asset and interests declarations have authorized officers (usually within the HR units) who act as liaison officers for the ANI. Such officers provide consultations on how to fill out asset declarations, forward paper copies of declarations to the ANI, compile a list of persons who failed to submit declarations. Such officers and the heads of agencies are liable for non-compliance with their duties.

ANI prepares four types of reports based on investigations conducted by inspectors: 1) on violation of incompatibility requirements; 2) on violation of conflicts of interest requirement resulting in administrative sanction; 3) on violation of conflicts of interest requirement resulting in criminal sanction (referred to the law enforcement agencies for criminal investigation); 4) significant difference in declarant’s wealth and income (see below).

ANI has the best track record in cases of incompatibilities and conflicts of interests (see the charts below). The law stipulates dissuasive sanctions, in particular removal from office (including for
MPs) and inability to occupy a range of public sector positions or run for the same type of position as the one from which the official was suspended for 3 years.

Most notifications passed on to ANI come from private citizens and mass media reports (in particular, obtained through the media monitoring).

Legality of ANI reports can be challenged in administrative courts, which happens very often. As of September 2015, there were about 3,000 cases in courts with the ANI is a defendant. The success rate of the ANI in defending its decisions is 95%. Litigation on behalf of the ANI is carried out by the ANI’s Legal Department. The latter also provides clarifications on the law application upon request of declarants (the number of such requests increased significantly during the past two years).

ANI uses several software tools:

1) the electronic database of declarations (includes only declarations submitted electronically) that is also used to analyze submitted data and detect irregularities (e.g. “red flag” significant changes in assets compared with previous declarations, discrepancies between assets and income). There is no possibility of automatic verification of data in external registers/databases;

2) software for monitoring mass media for information relevant to the ANI’s mandate (searching for key words);

3) internal case management system for ANI inspectors (includes all documents related to a case from its launch till final report and follow up, including documents from other agencies and third parties; reminders on upcoming deadlines for receiving information requested from other entities); heads of divisions, directors general and director of ANI can access the case management system and review information on any case.

To obtain information on bank accounts of a person the ANI inspector first submits a request to the Fiscal Service. The latter runs a register of bank accounts and informs the ANI about all accounts opened in the declarant’s name. Then the ANI inspector can request specific information on the account from the bank.

Deadlines are established for processing of cases by the inspector: sixth months for cases on incompatibilities and conflicts of interests; 1 year for unjustified wealth cases. Although delays happen sometimes in practice.

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Quality of persons investigated by ANI (high profile cases) 2008 - 2015

Deputies (M Ps): 86
Senators (M Ps): 32
County Council Presidents/ Vice Presidents: 22
Ministers: 6
State Secretaries: 4
High Public Servants (General Secretaries): 5
Unjustified assets: 9
Other criminal deeds: 43
Incompatibilities: 87
Conflicts of interests: 73
Criminal conflicts of interests: 38
Administrative conflict of interests: 35

Main findings (high profile cases) 2008 - 2015

Source: ANI presentation.

Asset and interest disclosure framework

Introducing assets and interests disclosures

Obligation to disclose assets is introduced
Disclosures become public
First sanctions for failure to disclose assets and interests
Online public portal is established by ANI
Special online sections for candidates disclosures
ANI introduces electronic forms for assets and interests disclosures

1996 ... 2003 ... 2007 2008 2009 2010 2011 2012 ... 2014 2015

National Integrity Agency is established
ANI’s law is declared unconstitutional
New legislative framework enters in force
Online public portal reaches 5 million disclosures

Source: ANI presentation.
In Romania there are about 300,000 public officials who fill in asset and private interests declarations; during an election year the number of declarations filed is multiplied 2-3 times due to election candidates who have to file declarations as well. The ANI’s web-site contains more than 5.2 million declarations as of September 2015. Two separate forms are submitted – for assets and interests.

There are several options for submitting declarations:

i. electronically through ANI’s web-site;

ii. by downloading a form from the web-site, filling it out, signing and submitting in a paper form;

iii. in paper form not using the special form.

The ANI has outsourced digitalization of paper declarations to the external company. The digitalization includes only scanning as an image that is then uploaded on the web-site. Only declarations submitted in the e-form are verified using electronic tools and special software. Submission in electronic form requires a special method of authentication using a token that costs about EUR 20 per year. This discourages electronic submissions. Only about 20% of declarations are submitted in the electronic form.

Asset declarations are submitted: 1) annually by 15 June; 2) upon entering or leaving office (within 30 days after appointment or dismissal); 3) by candidates running for public office. Interim declarations of significant changes in the assets of the declarant are not submitted.

The asset declaration includes information on the income of the declarant during the previous year up to 31 December; all other information (e.g. accounts, assets) is included as of the date of submission of the declaration.

The declarant has a right to correct his asset declaration only within 30 days after the deadline for submission (i.e. by 15 July). However, submission of the corrected declaration does not exempt from liability for unjustified wealth.

Forms of the declarations of assets and interests are attached to the Law #176/2010. The ANI published on its web-site guidelines on filling out declarations of assets and interests.²

Declarations of assets and income are published on the ANI’s web-site, except for some data: ID number, residence address, the address of real estate mentioned in the declaration, banks in which accounts are opened. Declarations remain on the portal throughout the time a person holds a public office and three years afterwards, then the declaration is archived.

Case is launched by ANI on its own initiative or after receiving information about possible irregularity in the asset and interests declarations or possible violation of conflicts of interests and incompatibility requirements. The ANI’s internal case management system randomly distributes the case to an inspector. Inspector starts proceedings and gathers relevant information, including from other public agencies. The resulting report can be referred to the prosecution bodies, tax authorities, disciplinary commissions in the public agencies, wealth investigation commissions.

When gathering information during an evaluation the ANI inspectors have the right to demand information (documents) from any person or entity, including banks, notaries and lawyers, without a court order. ANI uses special form for sending information requests. The requests can be sent to the following entities: tax administrations, land registrar, trade registrar, banks, credit bureaus, utility operators, official gazettes, police authorities, electoral authorities, private companies, other public or private entities.

The ANI does not verify the authenticity of documents produced, only wealth commission has such right. Failure to submit information within 30 days is subject to the administrative liability of a fine of EUR 50 per each day of delay. The official who is under investigation has the right to submit explanation and evidence in his/her defence; the ANI requests such official to provide a statement.

Wealth investigation commissions are set up at each court of appeal and consist of two judges and a prosecutor. The commission can summon and hear witnesses, obtain information and evidence from the third persons. If the declarant cannot explain his assets with regard to his income, the ANI can request and analyze information only on the declarant and his/her close relatives while the wealth commission can investigate all other relatives of the person.

The ANI’s report on the investigation is submitted to the wealth commission, which reviews the report to check its legality and refers the case for final decision-making to the court of appeal, which decides on the existence of unjustified wealth and its confiscation. The final decision is published in the official gazette. The Ministry of Finance executes confiscation orders.

The ANI starts an evaluation on unjustified assets if there is a significant difference (of more than EUR 10,000) between income and assets of the declarant. Overall ANI opened 113 cases of unjustified wealth, most of which are still pending in court. Total difference in assets established by the ANI amounted to EUR 25 million. Only 10 final decisions were delivered by the High Court with EUR 2.6 million confiscated into the state budget.

The ANI does not deal directly with the criminal offence of submission of knowingly false information in the declarations. The ANI forwards such cases to the prosecutor’s office. In the past, however, in the vast majority of cases, the Prosecutor’s Office decided that there were insufficient grounds for prosecution. The ANI therefore relies mostly on the offence of unjustified wealth that is a significant discrepancy between assets and income. The proceedings are administrative, albeit they may result in confiscation of property.

The ANI can start investigation three years after the official ceased to perform his official functions.

**Other anti-corruption institutions in Romania**

**DNA (Direcția Națională Anticorupție).** The National Anti-corruption Directorate (DNA) was established in 2002 and was linked to the EU accession negotiations that started earlier. The DNA is an independent judicial body and operates within the Prosecutor's Office attached to the High Court of Cassation and Justice. The DNA’s status was reformed in 2005 following Constitutional Court decision that certain high-level officials could be investigated/prosecuted only by the High Court of Cassation and Justice, which contradicted independent status of the DNA. Its remit is to investigate and prosecute high-level and complex criminal corruption cases. Parliament excluded tax evasion crime from the DNA jurisdiction in 2013.

DNA jurisdiction covers the whole of Romania with its head office in Bucharest and 14 local offices (in cities with court off appeal). The DNA Chief Prosecutor can institute new local offices. The DNA is headed by a chief prosecutor who is assisted by two deputy chief prosecutors. Chief prosecutor’s term of office is 3 years and it can be renewed once. The Minister of Justice proposes a candidate for the Chief Prosecutor position, it is reviewed by the section of prosecutors of the High Council of Magistracy and the President of Romania makes a final decision. The Chief Prosecutor of DNA can be removed by the President of the Republic, at the proposal of the Minister of Justice, after the High Council of Magistracy opinion.

There are 145 prosecutors positions in the DNA (from them 132 are actually filled in as of September 2015), 220 police officers (181 filled in) and 55 experts specialized in economics, finance, banking, customs, and information technology. The DNA’s staff also includes 196 auxiliary employees. DNA prosecutors investigate around 9,000 cases.

DNA has wide investigative authorities. The Law no. 78/2000 stipulates that DNA has the duty to investigate suspected corruption committed by public officials. A case falls under DNA investigative authority under the following conditions:

- the damage caused by the offence exceeds EUR 200,000;

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- the value of the bribe exceeds EUR 10,000; or
- the offence is committed by a public official falling into one of the categories explicitly listed by the law (e.g. Members of Parliament, members of the Government, specific high-level officials of central and local administration, judges and prosecutors, mayors, police officers, customs officials) as well as by persons holding a position of director and above within national companies and enterprises, commercial undertakings where the state is a stakeholder, central financial-banking units.

It should be noted that DNA’s investigative jurisdiction was used as a model by the drafters of the Ukrainian Law on the National Anti-Corruption Bureau, as adopted in October 2014.

**National Office for Crime Prevention and Asset Recovery.** The legal basis for the office: Government Decision no. 32 of 12 January 2011 regarding the designation of the National Office for Crime Prevention and Asset Recovery as Romania’s ARO, revised in 2014; Government Decision no. 652 of 29 June 2009 on the organization of the Ministry of Justice; Law no. 55 of 2012 on Romania’s cooperation with Europol; Government Emergency Decision no. 123 of 2007 on consolidating cooperation with the EU Member States; the modification of Law no. 302 of 2004 on international legal cooperation.

The Office is set up under the Ministry of Justice of Romania and acts as Romania’s Asset Recover Office (ARO). Its functions include:

- Exchange of information with similar EU ARO’s;
- Exchange of best practices on asset recovery with other EU MS competent authorities;
- Support of Romani’s competent authorities in tracking of criminal assets;
- Collection and analysis of statistical data;
- Analysis of the disposal process of confiscated assets;
- CARIN contact point;
- Represent Romania in international fora on asset recovery and crime prevention;
- Training for Romania’s practitioners;
- Support of Romania’s competent authorities with best practice in asset management.

It has direct access to the following databases (based on username and password): Trade registry (Ministry of Justice), Security interests in movable property (Ministry of Justice), Population records (Ministry of Interior), Vehicles (Ministry of Interior), Passports (Ministry of Interior), Stolen assets (Ministry of Interior), Weapons (Ministry of Interior), Stolen vehicles (Ministry of Interior), Land register (National Agency for Land Registration), Register of bank accounts (Ministry of Finance). The office has indirect access to databases through requests to proper authorities with regard to information on: Boats (Ministry of Transport), Airplanes (Ministry of Transport), Customs records (Ministry of Finance), Taxes (Ministry of Finance), Import and export control (Ministry of Finance), any other public institution in possession of relevant data.

The Office provides information on request from another ARO (member of the ARO platform or CARIN Network) or to national authorities (Prosecutor’s Offices, Romanian Police, Courts).

The Romanian ARO has no direct powers to freeze assets. Freezing orders can be executed directly by the competent prosecutor’s offices or courts. The ARO’s role is to identify assets and offer guidance if requested.

Romania plans to establish a new Asset Management Office (National Office of Management of Seized/Confiscated Assets). Relevant draft legislation is pending in the Parliament. The agency will focus on the maintenance of clear records of seized and confiscated assets and management of certain categories of goods until the final decision on their confiscation.

**Table.** National seizures and confiscations (in EUR approximately)
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<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
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<td>Value of damage recorded in indictments</td>
<td><strong>580,811,557</strong></td>
<td><strong>761,614,506</strong></td>
<td><strong>768,932,432</strong></td>
<td><strong>1,962,033,280</strong></td>
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<tr>
<td>Value of seized assets</td>
<td><strong>88,279,062</strong></td>
<td><strong>241,860,286</strong></td>
<td><strong>419,587,519</strong></td>
<td><strong>434,576,213</strong></td>
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<tr>
<td>Value of confiscated assets</td>
<td><strong>1,675,553</strong></td>
<td><strong>5,092,713</strong></td>
<td><strong>7,814,500</strong></td>
<td><strong>7,620,436</strong></td>
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*Source: Ministry of Justice presentation.*

**DGA (Directia Generala Anticoruptie)**. The DGA (Anti-Corruption General Directorate) was set up in 2005 as an agency within the Ministry of Interior as a separate legal entity. Its objective is to prevent and combat corruption within the Ministry. It is a part of the Criminal Police and its investigative activities are directed by the prosecutor. It has 630 staff members in the central and territorial offices (13 regional units and 39 county offices). The DGA consists of four departments (prevention, investigation, support, analysis and forecast). The DGA developed a methodology for detecting corruption in the MoI that is based on risk assessment approach. The DGA developed and uses a special software MARC – Assisted Management of Corruption Risks. The Investigative Department includes operative officers, including undercover agents. It has its own technical unit, but also cooperates with the national security service and the MoI. The DGA conducts integrity tests of the Ministry’s employees based on the procedure approved by the Minister’s order. The discrepancy between income and assets of an employee can become a basis for disciplinary proceedings. DGA conducts training for other public authorities. In 2013 the Government proposed to extend the DGA’s mandate to cover the whole public sector, but it was rejected by the parliament.

**Anti-corruption legislation in Romania**

Main anti-corruption laws in Romania:

- Law # 176 of 1 September 2010 on the integrity of public officials and dignitaries
- Law # 144 of 21 may 2007 on the establishment, organization and functioning of the National Integrity Agency
- Government Emergency Ordinance # 43 of 4 April 2002 regarding the National Anticorruption Directorate
- Government Emergency Ordinance #63 of June 2013 for amending Government Emergency Ordinance # 43/2002 regarding the National Anticorruption Directorate
- Law # 78 of 8 May 2000 on preventing, discovering and sanctioning of corruption acts
- Criminal Code.
RECOMMENDATIONS FOR UKRAINE

1. **Organizational model** of the ANI could be used when designing the National Agency for Corruption Prevention in Ukraine. In particular, the administrative investigations should be conducted by inspectors, who would then present a case (a “charge”) to the NACP as a decision-making body. The NACP procedures should not require that a member of the NACP is designated for each case to present it to the full panel, as it would affect impartiality and breach fair trial principles. The “accusation” and “decision-making” roles should be separated through internal rules of procedure. This would result in fair proceedings and reduce the risk of court appeals.

The **NACP inspectors** should have sufficient operational autonomy, as is the case in the Romanian ANI. It includes autonomy from the NACP members and senior management of the NACP secretariat. Operational autonomy (non-interference in the investigation of specific cases) should be supported by the guarantees from arbitrary dismissal and any other harassment, including through disciplinary proceedings.

2. The system of the **NACP liaison officers** in public authorities should be established and reinstated in the law. It could be based on authorized anti-corruption officers that were appointed in all ministries and government agencies. The original draft Law of Ukraine on Corruption Prevention included relevant provisions, but they were removed from the draft text in the parliament. Such officers could be responsible for controlling submission of asset declarations by the employees, including new and departing employees, provide advice to the employees on the correct implementation of the Law on Corruption Prevention. Assigning the function of control over submission of asset declarations to such officers could solve the problem without establishing a central roster of the declarants, which appears not to be feasible in Ukraine’s context. Such decentralized control is easier to implement and can be carried out by the officers for their respective institutions by comparing the list of the new and outgoing employees with the declarations filed in the e-declarations system. It would require additional internal regulations, e.g. that the HR departments notify the officers about new and outgoing staff (control of submission of annual declarations by officials who are already in the system will be conducted by e-declarations system automatically).

3. The NACP should develop a software or use external company services for conducting **mass media monitoring** to detect information relevant for the NACP investigations, in particular about allegations of conflicts of interests, unexplained or excessive assets possessed/used by public officials, failure to submit an asset declaration or any other violation of the anti-corruption legislation which the NACP is supposed to enforce.

4. The e-declarations software to be used by the NACP should incorporate an algorithm to detect and notify the NACP officers about irregularities in the asset declarations (“**red flags**”). Examples of red flags:

   - significant changes in income or assets compared with previous declarations,
   - discrepancies between assets and income / income and expenditures,
   - unusual or excessive loans,
   - new corporate rights acquired by the declarant or his/her family member, income from the sale of corporate rights,
   - casino or gamble wins, gifts,
   - asset deals with family members,
   - assets acquired or sold below or higher than market conditions,
   - foreign transactions,
   - income from trusts,
- insurance payments,
- transactions related to intangibles, e.g. IPRs or consultancies.\(^5\)

The list of red flags could be extended based on the experience of detection and investigations. With time, the scope of the analysis could be extended to include external sources (e.g. when the e-declarations system is connected with external public registers).
