

UNICE TASK FORCE ON ENLARGEMENT

**2002 REPORT ON CANDIDATE COUNTRIES' PROGRESS
TOWARDS EU ACCESSION**

ROMANIA

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Executive Summary

Romania continues to be the least advanced EU candidate country in terms of its accession negotiations. Positive for the first time for a number of years in 2000, GDP growth (5%) accelerated in 2001. If the macro-economic environment has improved, the situation is still fragile. The Romanian economy is closely integrated with the EU economy since 72% of Romanian exports are to the EU and 82% of Romanian imports come from the EU.

The success of privatisation of Sidex and Banca Agricola has strengthened Romania's credibility abroad. The RICOP programme to flank structural measures (industrial and social restructuring exercises, privatisation operations) has been unblocked (€ 100 million): 65 businesses are concerned by this programme financed by the European Commission.

In the area of free movement of goods, in 2001 the government introduced import restrictions on imports of "strategic" raw materials (sunflower seeds, scrap metal), thereby violating commitments made vis-à-vis the EU and WTO. Similarly, little progress has been made towards transposition of the new approach and global approach directives.

The Romanian financial system is insufficiently operational and incapable of underpinning development of economic activity and investment. Also, in practice, repatriation of currency remains problematic in Romania.

For state aid, no new legislation has been adopted. Despite progress, many instances of aid are not notified and aid programmes are not aligned (tax rate on export profits, law on promotion of foreign direct investment). All sectors seem to benefit from public aid in Romania.

Actions recommended

To improve the business environment, FDI and Romanian investments, Romania should concentrate on the following priorities in the near future:

- Accelerate macro-economic and financial stabilisation.
- Intensify structural reform and privatisation/restructuring, in particular in the energy sector.
- Improve the stability, transparency and predictability of the regulatory framework, inter alia for public procurement and taxation.
- Reinforce efforts against corruption, which requires a depoliticisation of the administration and a reliable customs system.
- Put in place a reliable judicial system.
- Bolster the capacity of administrations for effective implementation of the regulatory framework.

1. Introduction

At the start of the Spanish Presidency Romania had provisionally closed nine chapters: Statistics, SMEs, Science and research, Education and training, External relations, CFSP, Fisheries, Consumer protection and health, Company law. Romania is expected to open all the outstanding chapters before the end of 2002.

Romania continues to be the least advanced EU candidate country in terms of its accession negotiations.

- **Macro-economic situation**

Positive for the first time in 2000, GDP growth (5%) accelerated in 2001. If the macro-economic environment has improved, the situation is still fragile.

In its most recent Regular Report, the European Commission recognises that Romania has made progress in putting in place a viable market economy, but that it is not in a position to stand up to competitive pressure and market forces within the EU on a medium-term perspective.

Reducing inflation and restoring the external balance are the two priorities which the government must pursue when defining its macro-economic policies.

The new programme for structural policy worked out with IMF requires Romania to achieve better coordination of its macro-economic policies. One of the points that is stipulated is greater financial discipline on the part of companies. An IMF mission is currently evaluating the progress made by the Romanian government with a view to releasing the second tranche under the stand-by agreement. A supplementary letter of intent from the Romanian government stressing corrective measures still has to be finalised and approved by IMF's Board.

- **EU-Romania relations**

In 2001 Romanian exports amounted to USD 11.4 billion (up 9.8% on 2000) and imports were USD 15.5 billion (up 19.1% on 2000). The Romanian economy is closely integrated with the EU economy since 72% (i.e. USD 7.72 billion) of Romanian exports are to the EU (6% to CEFTA) and 82% (i.e. USD 8.92 billion of Romanian imports come from the EU (9% from CEFTA).

Romanian exports to the EU can be broken down as follows: one third in the textile, ready-to-wear and footwear sector (35%), ores and base metals (20%), machinery and equipment (15%). For imports from the EU, the breakdown is: machinery and equipment 23%, ores and base metals (21%), textiles and clothing (16%), chemicals (8%).

It should be noted that Romanian private operators accounted for 67% of Romanian exports in 2001.

2. Accession criteria

- **Borderless internal market**

Privatisation has accelerated since the first half of 2001. The success of privatisation of Sidex and Banca Agricola has strengthened Romania's credibility abroad and removed the political taboo on this subject. Two other public enterprises are in the process of privatisation: Rafo (oil refinery) and SNTR (tobacco). In the different cases, it seems that transparency has not always been the rule. The arrangements for the expected privatisation of Alro (aluminium) also raise doubts.

Nevertheless, a draft law designed to accelerate privatisation, suggested by the EU and the World Bank, was submitted recently. It makes provision for forgiveness of public enterprises' debts prior to 31 December 2001, and also for disposal of a series of public enterprises for the symbolic price of one euro.

Privatisation procedures have been revised and a structure has been created (APAPS: Authority for Privatisation and Management of State Assets). Armed with legal powers, it is in charge of the privatisation process. However, the role of APAPS will probably diminish because forthcoming privatisation operations are likely to relate to the energy sector and therefore fall within the province of the Ministry of Industry and Energy.

The RICOP programme to flank structural measures (industrial and social restructuring exercises, privatisation operations), hitherto subject to the privatisation of Sidex, has been unblocked (€ 100 million): 65 businesses are concerned by this programme financed by the European Commission.

In the area of industrial and intellectual property, Romanian legislation is in line with the *acquis communautaire*. New measures concerning protection of intellectual property rights during customs clearance operations have also been adopted. The Geneva act on international deposit of industrial designs has been ratified, as have the Geneva treaties on copyright, on interpretations and performances and on phonograms.

However, application of the texts is far from effective. Pirated products are found in large numbers on the Romanian market (audio and video cassettes, CDs¹, software packages², television programmes, textiles). The financial and human resources of Romania's copyright office are insufficient to implement the legislation. Greater cooperation between the bodies in charge of enforcing industrial and intellectual property rights (border police, judicial authorities and customs) is indispensable. It should be noted that, if Romania is not really a country of production (most counterfeits are made in Ukraine and Bulgaria), it is a country of sale and transit. This proves that border controls are inadequate.

Romania has made virtually no progress in adoption of legislation on protection of personal and commercial data, even if a law transposing provisions on protection of confidential data was approved by parliament in June 2001.

The new legislation on public procurement adopted in 2001 certainly represents progress, but the extent to which its application leads to real improvements remains to be seen. Companies which engage in bribery still have some advantages in tender calls, etc. Opacity in public procurement procedures are still the rule to the detriment of transparency and predictability. For public tender calls, sweeteners are essential and the firm making the lowest offer rarely wins the contract.

- **Free movement of goods**

Complete elimination of trade and non-trade barriers for industrial products in EU-Romania trade should have been realised by the start of 2002 under the timetable adopted by Romania. However, in 2001 the government introduced import restrictions on imports of "strategic" raw materials (e.g. sunflower seeds, scrap metal), thereby violating commitments made vis-à-vis the EU and WTO.

An anti-dumping procedure is under way for seamless pipes, iron pipes and unalloyed steel. Similarly, anti-dumping duties have been imposed on EU imports of heavy plate produced by Sidex and urea.

¹ 60% of CDs sold in Romania are pirated according to IFPI

² 77% of the software in use in Romania was pirated in 2000 against 81% in 1999

Despite adoption in April 2001 of a law for transposition of the new approach and global approach directives, little progress has been made towards their implementation. Adoption of sectoral laws has not moved forward, given the non-existence of the corresponding framework legislation. Progress is virtually non-existent for sectoral directives under the old approach (apart from the directive on timber and some advances on chemicals and pre-packaging).

The law on evaluation of product conformity with quality standards was voted in November 2001; it will come into force in June/July 2002; implementing standards for marking were adopted in February 2002: until Romania's entry into the EU, the CS mark will correspond to the EU's CE mark. On this point, it seems possible to consider that the CE directive has been transposed *de facto*. New implementing decrees for this law were adopted in March 2002.

To date, only 15-20% of harmonised European standards have been transposed by the Romanian standardisation body. Transposition remains very poor for industrial products. However, progress can be noted in metrology, marking, cosmetics, electricity and toy safety. The services for translation of CE standards have been strengthened. However, conformity assessment bodies and laboratories are still confronted with major institutional weaknesses, preventing proper implementation of the *acquis* in this area: four tender calls are to be launched to accelerate harmonisation with CE standards and increase the administrative capacity of certification, accreditation, metrology, etc., bodies.

The absence of customs and market surveillance infrastructures is handicapping realisation of product safety checks at external borders. Better administrative cooperation is warmly recommended.

- **Free movement of capital**

This chapter of the negotiations has not moved much. The Romanian financial system is insufficiently operational and incapable of underpinning development of economic activity and investment. Following privatisation of Banca Agricola, the state presence represents 46% of assets in the banking sector.

Almost all transactions involving capital outflows continued to require prior authorisation from the National Bank of Romania. Foreign companies had a period of 160 days as compared with the contractual period of 90 days to settle their invoices and the penalty was 10 to 25% of the amount of the unpaid invoice: the rules were amended in autumn 2001 and circular no. 26 of 20 November 2001 has relaxed controls on capital outflows. But, in practice, repatriation of currency remains problematic in Romania.

Purchase of real property by non-nationals is proscribed by the constitution, but is authorised for foreign companies only if they have a local legal structure in Romania.

There has been no progress in the areas of payment systems and money laundering legislation. The national office for money laundering prevention and control has just come into operation. To date, it has collected 400,000 items of information, mostly from banks and has processed 300 dossiers (about which there were doubts): if fifty dossiers have been subjected to a judicial inquiry, only one has reached court.

- **Freedom to provide services**

Little progress has been made in this area. If anything, discrimination against professionals wishing to provide their services in Romania has increased, in particular for law firms.

For financial services, the *acquis communautaire* is far from being applied. In the banking sector, approximation with the *acquis* can be discerned for some rules (accounting rules, statutory minimum company capital, own funds, etc.). The Romanian Commercial Bank (BCR) is the next to be privatised? The consultant is likely to be the Japanese Daiwa.

The other two establishments will be the Savings Bank (CEK) and the Export-Import Bank, but no deadlines have been set.

In the insurance sector, the insurance supervision commission is operational but lacks resources (personnel, equipment, training). The market continues to be closed to foreign operators.

No noteworthy progress can be reported in the areas of investment services and securities markets.

- **Competition**

In the field of **antitrust** legislation, the minimum turnover threshold triggering notification has been reviewed, but efforts still have to be made to adopt the derived law. For **state aid**, no new legislation has been adopted. Despite progress, many instances of aid are not notified and aid programmes are not aligned (tax rate on export profits, law on promotion of foreign direct investment). All sectors seem to benefit from public aid in Romania. Many Romanian enterprises are behind with their tax or energy bills: those that know the right people or can afford to employ intermediaries benefit from these advantages to the detriment of those that lack these connections and are not granted stays of payment.

The law on “industrial estates” has not been repealed but watered down. A map of regional aid has been prepared in order to clarify the situation in this area. Nevertheless, the aid incorporated in the various industrial estates, technology parks, free zones, free ports, disadvantaged areas, etc., continues to be incompatible with European legislation.

The competition council is the body in charge of implementing the legislative apparatus in these two areas. The competition office is in charge of supervising state aid. These two bodies suffer from a lack of capacity (personnel, training, equipment) to perform the task of implementing the legal framework properly.

- **Sectors**

Energy

The situation of the energy sector in Romania is unsatisfactory. No progress has been made on security of supply. On competitiveness, a “*national strategy for energy development*” was adopted in June 2001, but its scope remains very limited. In the electricity sector, the price level does not cover production costs, even if it has been increased. The deterioration of the financial health of public undertakings has worrying consequences for the Romanian economy as a whole. For the gas sector, the invoice settlement rate remains unsatisfactory. The situation in this sector is disquieting because the production and underground storage structures (resulting from the split of Romgaz in 2000) have once again merged, placing a question mark over the programme to restructure the sector.

A law on energy efficiency has been adopted but the means deployed for proper implementation are inadequate.

Privatisation of the energy sector (gas, oil, electricity) should be accelerated to render it viable and competitive.

Telecommunications

Developments in this sector are limited. The administrative capacity of the post and telecommunications sector has been strengthened through replacement of the agency previously in charge of implementing legislation by a specific ministry, making it possible to pave the way for the liberalisation scheduled for 2003. Until then, Romtelecom will maintain its monopoly on fixed-line telephony. It also conserves its exclusive licence on 1800 MHz frequency bands, a monopoly which has been contested by private mobile telephony operators.

Audiovisual

Little progress has been made in this sector. A directorate has been put in place: responsible for legislation, it has obtained a mandate to negotiate international agreements.

The convention of television without frontiers has still not been ratified.

A framework law on audiovisual, under discussion since 1998, is currently before the Senate. Debate in the Chamber of Deputies should start soon with a view to adoption in early summer 2002. This is an essential precondition for adoption of the complete *acquis communautaire* in this area.

- **Taxation**

Developments are limited in this area. For indirect taxation, progress can be noted in excise duties: the rates charged on cigarettes have increased, but remain too low; a single excise duty has been adopted for spirits and fortified wines. Alignment on the *acquis communautaire* for the VAT regime is still very incomplete (scope, reimbursement, exempt and zero-rate transactions). For direct taxation, administrative cooperation and mutual assistance there has been no progress worthy of note. Generally, the instability and inconsistencies of tax legislation greatly perturb the business climate in Romania.

- **Customs**

Even if this is one of the areas in which progress has been made, the politicisation of customs officials continues, thereby affecting the integrity of their work.

The Romanians are progressively equipping themselves with a customs code in line with the *acquis communautaire* (simplified procedures, inward processing, customs relief, customs valuation, counterfeiting, pirated goods, transit). Several customs laws have already been adopted: on protection of cultural goods, protection of intellectual property rights, and adoption of an integrated Romanian customs tariff in line with the *acquis*.

In the area of administrative capacity, attention should be drawn to progress in putting in place computer systems which are interconnected with Community systems or for processing of returns, the ASYCUDA system (98% of returns are processed via this route). Similarly, more cooperation between customs, border police, national police and financial brigade can be noted.

Substantial additional efforts are essential for both alignment on the *acquis* and a strengthening of customs administration capacity.

- **Justice and home affairs**

Corruption remains a major problem in Romania. Although the special unit to combat corruption and organised crime set up in October 2000 has made it possible to make progress in this area, the European Communities' convention on protection of financial interests still has to be adopted.

Controls at external borders have been stepped up, but much remains to be done. Two decrees on the borders of the Romanian state and on the organisation and functioning of the border police (simplification of hierarchical structures, re-assignment of administrative personnel to more operational tasks) have been adopted. The latter is part of a wider government strategy to combat corruption in the border police, intended to increase personal responsibility and make the force more professional. Romania has still not adopted a law on data protection, which is a prerequisite for discussions on a cooperation agreement with Europol.

Customs cooperation has been improved inter alia thanks to establishment of an anti-fraud squad in January 2001 and creation of a computerised national database in line with the CIS convention.

While it is before parliament, the Council of Europe's convention on money laundering, detection, seizure and confiscation of the proceeds of crime has not yet been ratified. The

administrative capacity of the national money laundering prevention office needs to be strengthened (financial resources, training).

- **External relations**

Alignment on the *acquis* regarding commercial policy is fairly well advanced. However, decisions contrary to EC practice in the framework of the European agreement and WTO were taken in 2001. In particular, these are likely to result in transfer of competence for commercial policy from the industry ministry to the foreign affairs ministry. Among other things, restrictions on strategic products (see section on free movement of goods) have been adopted.

3. Recommendations

To improve the business environment, FDI and Romanian investments, Romania should concentrate on the following priorities in the near future:

- Accelerate macro-economic and financial stabilisation.
- Intensify structural reform and privatisation/restructuring, in particular in the energy sector.
- Improve the stability, transparency and predictability of the regulatory framework, inter alia for public procurement and taxation.
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- Put in place a reliable judicial system.
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List of Rapporteurs of the UNICE Task Force on Enlargement 2002

Mr Erkki **Auvinen**, Partek Corporation

Mr Michael **Carbine**, International Computers Limited

Mr Werner **Freilinger**, MIBA Sintermetall AG

Mr Janis **Grins**, Freja

Mr Edi **Kraus**, Yulon d.d.

Mr Uwe **Krüger**, HOCHTIEF AG

Mr Willem-Jan **Laan**, UNILEVER NV

Mr Dominique **Meillassoux**, Mossley Group

Mrs Lucy **Neville-Rolfe**, Tesco

Mr Vincent **O'Doherty**, Superquinn

Mr Michael **Persson**, DANISCO A/S

Mr Andreas **Polycarpou**, Ideal Group

Mrs Bertrand **Vanden Abeele**, Suez