NOTE
from: General Secretariat
to: Collective Evaluation Working Party
Subject: Summary update of the existing analyses of information on border control, asylum, immigration and police in Romania, including the collective reply from Member States' embassies provided by the Portuguese Embassy in Bucharest to the questionnaire sent by the Presidency in April 2000

I. Introduction

For reasons of efficiency and to avoid duplication, the Council Secretariat herewith presents a summary update of the already existing analyses of information on justice and home affairs issues in Romania (except on justice: viz. doc. 7915/1/00 EVAL 17 ELARG 47).

This update consists of a list of all documents which have been consulted since the initial analyses were drafted, for the purpose of drafting the preliminary draft country report on Romania (viz. doc. 7732/1/00 EVAL 14 ELARG 42 RESTREINT), as well as the collective reply from member States' embassies in Bucharest to the Presidency questionnaire.

Delegations will have received the bulk of the information listed below either through the 'normal' channels or as part of the background information handed out at EVAL working party meetings.
II. State of information

1. Horizontal information

On a general level, information was gathered from the following sources:

- Commission regular report on Romania's progress towards accession
- 7201/99 EVAL 24, ELARG 39 (Analysis of material on Border Control in Hungary, Poland, and Romania (revised document))
- SN 4909/99 (Observations on crime trends and prevention and on external border security in Poland, Hungary and Romania)
- 8554/99 CIREFI 26 (Illegal immigration in Romania - information given by the Romanian delegation)
- Contributions received from Romania through the Commission's screening procedure (JHA and Schengen screening)
- Phare Report of the JHA Expert Mission to Romania
- 13968/99 CIREFI 61 EVAL 66 (Information from the Romanian delegation)
- 5th meeting of the EU-Romania Association Committee (DS 384/99 ADD 3)
- Romanian mission to the EU
- ICMPD Report
- Law n° 56/1992 concerning the Romanian State Border
- JHA Progress Report on Phare Assistance to the Associated Countries in Central and Eastern Europe (European Commission 1999)
- Commission's opinion on Romania's application for membership of the EU (15 July 1997)
- Council of Europe 1999 : Comité Européen de Coopération Juridique-Comité d'Experts sur L'efficacité de la Justice: Mesures législatives ou autres, récemment prises ou envisagées par les états pour améliorer l'efficacité de la justice
- Screening document : Answers of the Romanian Authorities to the Questionnaire in the field of JHA
- 12611/98 EVAL 5 ELARG 88 (Analysis of materials on Migration in Hungary, Poland and Romania)
- 12612/98 EVAL 6 ELARG 89 (Focused thematic on analysis including general discussions on existing material on Asylum)
2. Information per JHA-subject

Information was gathered from the following sources in the field of border control:
Information was gathered from the following sources in the field of asylum and migration:
- Oesterreich. BMI Stellung 17 04 2000 (Asylrecht)
- UNHCR (December 1999, Romania, the Return of Asylum-seekers),
- Schengen screening, 1999
- ICMPD (Istambul meeting 21 October 1999)
- IOM 30 September 1999 "The Return of Irregular Migrants",
- Cirefi 13968/99, "Contribution from Romania on Migration issues"
- EU screening, 1999
- Romanian document "Combatting illegal migration", 1999
- Cirefi 8979/98, "Illegal immigration in Romania"
- SN 1468/98, "Questionnaire on illegal immigration from Romania"
- Note de la Délégation Française de 1995 "Ressortissants roumain ayant renoncé à leur nationalité".

Information was gathered from the following sources in the field of police:
- Commission regular report on Romania's progress towards accession
- Contributions received from Romania through the Commission's screening procedure (JHA and Schengen screening)
- Phare Report of the JHA Expert Mission to Romania
- Screening document : Answers of the Romanian Authorities to the Questionnaire in the field of JHA
- Austrian paper of 17.4.00
- UNHCR document of 28.2.00 concerning the situation in Romania in the context of the return of asylum-seekers
- Various Romanian laws
- Romania Ministry of Interior “Facts regarding the Fight Against the Organised Crime and Corruption in Romania” – January 1999
Collective evaluation of the implementation of the European Union acquis in the field of Justice and Home Affairs in Romania

I. Border management

1. – Despite the assistance of Community funding, relatively little progress has been made in the area of border controls. The government has been struggling with the problems of infrastructure and human resources management for some time. To alleviate the situation, which in certain cases is taking on serious proportions, notably at the eastern border, a Phare programme with funding of EUR 10 million (1999) is under way and another programme with total funding of EUR 18 million (2000) is currently being finalised. The Government is making serious efforts to computerise the visa processing system, which will link up the Foreign Ministry, the Ministry of the Interior, the border posts and consulates. Funding of EUR 1 million is already available to implement this project in the framework of Phare programmes. Last January, an inter-ministerial working party was set up, coordinated by the Foreign Ministry, with the aims of reviewing current border practice and putting a stop to illegal migration from the east attempting to use Romanian territory to enter the Community.

2. – The Romanian Government recently approved the renegotiation of the border demarcation agreements with Moldova, Ukraine and Bulgaria. The authorities of these three countries have already been notified thereof. The crossborder problems that have arisen between the authorities in Bucharest and Chisinau are almost always the result of the inadequate resources made available to staff to counter illegal migration and the various forms of smuggling.

3. – Accusations of corruption have often been levelled at border guards and the police forces. Difficulties with career progression in these services, coupled with low pay, may contribute to the existence of corruption in certain areas. However, the main problem is the way in which the different officers are trained. Germany, which identified this problem some time ago, is currently running a programme to train police and border officers.
4. – The Government’s Emergency Decree No 80/1999 merged the existing border authorities under one command and the Border Guard Inspectorate-General was set up (under the Interior Ministry). This Inspectorate-General incorporates the Borders Commando-General, the Border Guard Directorate and all the departments previously under the control of the waterway police (now attached to the Coast Guard). The Border Guard Inspectorate-General has received few physical or human resources but this should be seen in the context of the current state of the Romanian economy. There is, however, evidence of a willingness to put an end to old practices which seriously violated citizens’ fundamental rights.

5. – Administrative penalties are imposed on air and sea carriers transporting passengers without proper documentation. In general, such persons do not manage to enter Romania but remain in the international zones and at the first opportunity, are sent back to the country they came from. The costs incurred by such situations are consequently charged to the air and sea carriers. The number of cases per year is not known but it would not be incorrect to say that there are several hundreds.

6. – Maritime surveillance, chiefly on the Black Sea, is undertaken by the Coast Guard. This authority has a small number of ill-equipped surveillance units which are obliged to work long hours. Customs control, especially in Constanta port, is sometimes quite thorough and can cause delays and inconvenience to those involved. The inadequate cover of the Romanian-Moldovan border, and the Romanian-Ukrainian border in the Black Sea area, has meant that these have not been used excessively for migration and smuggling via the sea. It is, however, conceivable that as the situation on land changes, the sea route will be used increasingly. The Romanian authorities’ policy in this area has been extremely hesitant, if not slack. In fact, there is a definite need to step up protection of the sea border in practice.

7. – Romania is not a very important destination for pleasure boats. However, Constanta port and the Danube are major docking centres for cargo ships. Neither passengers nor crews undergo advance checks and the shipping companies do not send the competent Romanian authorities any passenger lists. The checks, carried out at the border posts, comply with the rules for checks at land borders. The port authorities are responsible for the ships’ cargo, although they may hold the ships’ captains accountable for the content of the information provided. The inadequacy of
the means at the disposal of the authorities carrying out checks, which are often thorough, results in the free movement of various contraband goods.

8. – Decree-law No 56/1992 on border arrangements, subsequently amended by Emergency Decree No 80/1999, lays down that visas allowing entry to Romanian territory may solely be issued by diplomatic missions (consular sections) and consulates. Moreover, the legislation currently in force provides that visas may be issued at the border in exceptional circumstances only. In accordance with a memorandum signed by the Prime Minister, which has the same value as national law, the Member States of the European Union, the United States of America, the countries of the Atlantic Alliance (NATO), Australia, Japan and Israel are covered by this exception. The border authorities also have the power to cancel visas issued earlier, although no instances of this have been recorded so far.

9. – Crossborder traffic is largely the result of the border realignment carried out after the Second World War. The ethnic composition of Romania is a clear example of this. It is still standard practice to require passports from persons wishing to cross the border. For certain short journeys, presentation of an identity card is the sole requirement. In many cases, this document enables Moldovan nationals to travel to Bucharest and other Romanian centres.

The Foreign Ministry is currently studying a plan to align national law with Community law which will allow, also in this area, revision of certain practices now considered outdated.

10. – Although it is not possible to give an approximate date for adapting Romania’s international airports and ports to Community law, it is likely that this will happen only after greater pressure is put on the Romanian authorities. The new passenger terminal at Bucharest airport does not allow for this facility, thus demonstrating the weak commitment of those in charge. According to the Romanian Foreign Ministry, special corridors will be set up at all border posts for nationals of EU Member States. The date, however, has been left open.

11. – While not exemplary, dialogue between the various participants in border management seems good. There are still some areas of friction arising from differences in functions or errors inherited from the past but the willingness to demonstrate efficiency and rigour should be emphasised.
13. – There have been no reports of misunderstandings between the Romanian border security forces and their regional counterparts. Contacts and the chances of reaching agreement are best with Hungary, Moldova and Bulgaria. Romania intends to set up joint border posts with these three States. Relations with Ukraine and Yugoslavia tend to be more complicated and contacts with these countries must be strengthened.

14. – The problems that have arisen during contacts between the border populations and the various border security forces are exactly the same as those encountered by other EU applicant states. Special phenomena particular to Romania have not been reported. Small-scale smuggling has always gone on in the region and will be hard to eradicate. Routes used for drugs and illegal migration would, however, appear to be a more serious problem. The border populations seem to trust the different officers, not only because they are settled in their midst but also because they are often in on small crossborder deals.

15. – While there are still some minor problems, such as those mentioned above, the new structure has allowed the new organisation to take account of inherited responsibilities. The concentration of human and physical resources has enabled the unified command to deal more efficiently with the tasks previously assigned to two different institutions. The organisation is grappling with the problems inherent to the country's economic situation, lack of resources, and staff demotivation owing to salaries not keeping pace with inflation.

16. – Not enough funds have been allocated to improving border management in the state budget. For this reason, EU funding (notably Phare funds) of EUR 10.5 million in 1999 and 18 million this year was applied for and has already been received.

17. – There are still financial problems to be resolved, reflecting these times of change in Romania, but which cannot be considered serious. The salaries of staff assigned to border controls, while low, are not any lower than other public service salaries. It is vital to construct new buildings, improve computer equipment and, above all, train officers for their duties. There is evidence that criminal organisations have increasingly sophisticated means at their disposal, which means that the competent Romanian authorities must acquire modern equipment. In this context, given the annual allocation of funds to the border security forces, there are financial problems which can be resolved only by an external contribution.
18. – Romania has long considered the training of Border Guard staff as a priority. Twinning arrangements exist with EU Member States under the Phare programmes and under bilateral programmes with France and Germany. At the Bucharest Police Academy there is even a course component focusing on this area. Moreover, this subject is also studied in the training school for lower-ranking Border Guard officers, which also trains officers working under contract.

19. – No information was provided about the existence of a modern integrated radar system capable of operating on the maritime border. All the equipment in use in this part of the Black Sea is thought to be already obsolete or at the end of its working life.

II. A. Migration

1. – The Aliens Law has already been debated in both houses of the Romanian Parliament and is currently in the Conciliation Committee. The only article which gives rise to doubts and controversy is that on the requirement that Romanian nationals providing aliens with accommodation must inform the police authorities.

2. – Since 1 January 2000, visas are not issued by the Romanian authorities at land or sea borders. The law makes provision for exceptions.

3. – Passports in circulation may be counterfeit or falsified, which causes problems for the security forces. To put an end to this problem, which has negative consequences for Romania, new passports are to be printed in an EU Member State during the second half of 2000. These new travel documents will incorporate all the security features required under the strict rules established by Community legislation.

4. – The attitude of the Romanian authorities, in particular the Interior Ministry, to aliens living in Romania has not changed significantly in the last year. The vast majority of aliens continue to receive a "temporary-stay" visa, and few manage to obtain a "permanent residence" permit. This situation reflects the mentality of the old regime and which has not changed much for a number of reasons. Short-stay tourist visas are only issued abroad (embassy consular sections
or consulates). Visa extensions, which involve different procedures that are not always transparent, must be processed inside the country and at the Interior Ministry.

5. – According to these authorities, the visa applications refused by the embassy consular sections and the consulates do not satisfy the requirements of Romanian legislation. As a rule, the procedures and channels used by Romania’s European partners are followed (undesirables, holders of falsified passports or counterfeit visas, holders of documents which are not covered by Romanian legislation, anyone who refuses to pay legally prescribed taxes or fees, etc.). The procedures for "illegal entry" apply solely to aliens who cross the Romanian border illegally, since the act of doing so subjects them to Romanian laws and dictates.

6. – The Centre for the Reception, Screening and Accommodation of illegal aliens – Otopeni – is a unit under the Directorate-General of Passports, Aliens and Migratory Problems and is financed by the Interior Ministry. In general, while checks are being carried out on documents – which are not necessarily forged – their holders must wait in the international area of the air terminal until the procedure has been completed. When allowed to leave this area, even if they have not been charged, until the departure of the return or transfer flight, they receive no allowances from the Romanian authorities. The questions put to such passengers, who often have all the requisite documentation, are not always appropriate and are, once again, redolent of the old regime.

7. – No information on corruption problems related to the issue of residence permits or the granting of refugee status has come to the public’s attention. However, this does not mean that such problems do not exist or that there is total transparency.

8. – To date, agreements on the readmission of illegal aliens have been concluded with the following European countries: Austria, Belgium, the Czech Republic, Denmark, France, Germany, Hungary, Italy, Luxembourg, the Netherlands, Poland, Slovakia, Slovenia, Spain, Sweden and Switzerland. A similar agreement has been concluded with the Union of India.
Agreements are being negotiated or renegotiated with the following countries: Portugal, Egypt, Ireland, Jordan, Israel, Lebanon, Macedonia and Pakistan. Decree No 216/98 on passport rules provides for the possibility of limiting the right to free movement, by temporarily suspending the right to use a passport for periods of 90 days to 1 year, of anyone who adversely affects Romania's image either at home or abroad, infringes the laws of other countries or was readmitted under the abovementioned agreements. In 1999, 17 700 Romanian nationals saw their rights curtailed on the basis of that measure.

II. B. Asylum

9. The Refugee Office has finalised a bill amending Law No 15/96 on the status of and arrangements for refugees in Romania, with the objective of bringing it into line with other European Union legislation. The new wording contains new procedures and invokes the following concepts: "safe third country"; "safe country of origin"; and "temporary protection". The text, which was already examined by experts from the European Union and the Office of the United Nations High Commissioner for Refugees (UNHCR) at the time of the second Phare-JHA round table, is to be submitted to the Government for adoption.

10. Most asylum applications are lodged inside the country, either in Bucharest or in the main border towns. However, it is possible in theory to lodge applications at the border.

11. According to information obtained informally from the Foreign Ministry, the statistics contain figures rather different from those given in this questionnaire. In 1997, 1 424 applications were lodged and 80, i.e. 5.6 %, were approved (50 in accordance with the Convention of 1951 and 30 on humanitarian grounds). Again, according to the same source, no information is available on applications approved by the courts in 1997. Quite apart from any considerations which may be put forward on the subject, it should be noted that it is not greatly in the nature of the Romanian authorities to make use of the legal instrument of "political asylum". It is conceivable that the authorities in question use various methods to try to discourage potential asylum seekers, including denying them the right to information on the legislation in force.
III. A. Police

1. – The Border Guard Inspectorate-General is trying to build closer working relations with institutions with similar functions in the Schengen States and with the customs authorities. Despite the effort made with certain EU Member States, notably Germany, France and Italy, it is the intention of the Romanian authorities to extend contracts and receive as much support as possible for their training schemes.

2. – As regards intelligence or counter-intelligence services, no information was collected which might shed light on the matters under examination.

6. – To effectively counter drug trafficking, which has increased recently, the Romanian authorities have taken the following measures: (a) training staff to recognise drugs and other banned substances; (b) permanent exchange of information between the institutions involved in combating drug trafficking; (c) provision of technical equipment to the different border posts; (d) cooperation with the Squad for Countering Organised Crime and Corruption (a unit of this type exists in Constanța port); (e) support for the activities of liaison officers seconded by the Schengen States and other countries to Romanian territory. It is reported that some officers have been receiving external training, funded by third countries. The problem arises when these officers, having received training which equips them to perform their duties properly and effectively, leave the institution and seek better paid jobs on the labour market.

8. – The Romanian border authorities’ equipment, and even that of the police forces, is old and needs to be replaced. Despite the introduction of some new tools, the means available reflect the state of the national economy. The main needs are in the area of detection, since the organised crime gangs, increasingly present in Romanian territory, are using modern if not state-of-the-art equipment. In addition to detection devices, in particular those used to detect drugs and forged documents covering illegal exports, communication equipment must also be considerably improved.
9. While receptive to the security forces, the public frequently accuses police officers of abuse of power as well as corruption. The complaints lodged are examined by the competent departments but officers generally go unpunished. They are almost always given the benefit of the doubt. It is unusual for them to be charged and punished. Moreover, the Romanian people feel that they are weak and defenceless vis-à-vis the all-powerful police establishment. This deters complainants and problems are instead channelled through the courts. Given the population's poor economic situation, injured parties end up dropping their complaints. The degree of transparency in all these procedures falls short of the standard which might be expected of a country hoping to participate in Community institutions.

III. B. Customs

13. Cooperation between the various police bodies takes the form of contacts at management level, joint meetings and information exchange. The inadequate technical and human resources at the disposal of police bodies calls for such cooperation to be stepped up. Recently, information exchange between the criminal police and the border authorities resulted in operations which could definitely not have been successfully undertaken by any single police body. This sort of cooperation must be encouraged and umbrella organisations, responsible for information flows, allocated the necessary resources, chiefly at the communications level.

14. Although this question was asked, no reply was obtained.

15. Although this question was asked, no reply was obtained.

16. The policy pursued by the management of the customs authorities allows us to conclude that various training programmes are being implemented with relative success. The shortage of expert advisers and the limited means allocated to them have stood in the way of better results. Despite everything, compared with previous years, it is noted that the work being done by the Borders Commando-General is worthwhile and could be supported and funded externally.
17. No figures were provided for cases of active or passive corruption within the customs authorities. However, it is thought that some officers have been dismissed and others transferred. Matters related to the country’s armed forces continue to be covered up so that public awareness of their mistakes generally escapes the media. It can be said that, in practice, the methods used by the Border Guard Inspectorate-General follow those applied in other European Union countries.

IV. Justice

1. At the judicial level, the main problems are the inadequate training of staff assigned to the Justice Ministry and the fact that the current premises cannot easily house all the judicial authorities. Moreover, owing to the low salaries they receive, officials are not motivated to perform their duties properly. Lastly, a new internal regulation is being introduced in the sector which is more in line with the current context and the country’s future entry into the European Union.

2. If there are any training or refresher courses in the field of justice, such as those mentioned in the questionnaire, there is no evidence of these in practice.

3. In 1999 there were 3 383 judges, 1 974 prosecutors and 4 163 administrators.

4. Romanian legislation establishes the principle of dual jurisdiction. The law makes provision for the usual legal channels, which include the appeal and review channels, as well as special channels. The slow pace and the high legal costs result in many people abandoning the legal process.

5. Yes, there are commercial and real estate registers. Both are partially computerised, albeit with antiquated software.

6. The General Public Prosecutor at the Supreme Court of Justice is appointed and discharged by the President of the Republic, acting on a proposal from the Minister of Justice. To date there have not been any major sources of friction between the Public Prosecutor's Office and the various sovereign bodies.
7. Portugal does not provide any training for Romanian magistrates.

8. This information is not available at present.

9. Article 21 of the Constitution allows any citizen, independently of race, nationality, ethnic origin, etc., to bring a case before the judicial authorities to defend rights, freedoms or guarantees, irrespective of whether these are derived from the constitution or other laws. This possibility may take the form of direct action or use another procedural channel. All citizens are judged by the same bodies and in accordance with the same law. The body must guarantee the same procedural rights to all parties. Among the provisions guaranteeing equality to the parties, it is necessary to mention: Article 85 of the Code of Civil Procedure, which provides that the court cannot take a decision before summoning and hearing the parties, save as otherwise provided by the law; Articles 114 and 116, which guarantee reciprocal information of the parties in the civil procedure on the requirements and their defence; Articles 112, 115 and 132, which oblige the president of the court to hear the parties; and also Articles 74 to 81, which lay down the conditions in which free legal aid may be granted to anyone who cannot bear the legal costs of the case. That is the theory - what happens in practice is often the exact opposite. There are citizens who, owing to the slow pace and difficulty in satisfying all the legal requirements and the apathy and disinterest of the public service, ultimately abandon free legal aid. Other injured parties end up trying to settle disputes out of court.

10. The courts.

11. Only arbitration is foreseen at present although the possibility of also introducing conciliation is currently being examined.

12. Articles 6 to 8 of the Code of Criminal Procedure lays down that accused or charged persons and all other parties are guaranteed the right to defence throughout criminal proceedings. During this period, the judicial authorities must ensure the full exercise of procedural rights under the conditions prescribed by the law. They must also inform the accused or charged person of the charges against him, the legal framework of the charges and ensure preparation and exercise of the defence. Any party has the right to assistance from the defence throughout the trial. The Romanian language is used throughout the criminal trial. The judicial authorities of
administrative regions with other ethnic groups or minorities, e.g. Germans or Hungarians, guarantee such groups the right to use their mother tongue. Parties who do not speak the language in which the trial is conducted are afforded the possibility to take cognisance of the proceedings, the right to address the court and to draw conclusions and make assumptions through the intermediary of a sworn translator. In theory the terms of the law are satisfied by the defence requirements.

13. – (a) Absolutely, except in corruption cases where there is an attempt to cover up the facts.

(b) Not at present. However, the draft revision of the Criminal Code includes penalties for international officials implicated in corruption cases.

14. – The increase in the number of cases before the courts each year may point to increased confidence in the justice system but is also an indication that these are times of change for Romanian society. Various corruption cases have come before the courts and others are at the investigation stage. Contrary to what was said above, it is telling that an increasingly high number of the rural population are trying to settle their disputes out of court. This is more for financial reasons than for reasons related to confidence in the Romanian judicial system.

15. – Yes, it does apply.

16. – Yes.

17. – Yes.

18. – The anti-corruption unit plays a key role in detecting and even preventing the most varied crimes. It operates under normal conditions and has a high degree of professionalism. It may be said that the means at its disposal are inadequate.

19. – Witness and victim protection schemes are being examined.

20. – Article 329 of the Criminal Code covers such situations, with the exception of a legal person’s liability and closing of the public place. Nevertheless, the draft Criminal Code, currently being debated in the Romanian Parliament, now takes account of these situations.
21. – The European Convention on Mutual Assistance in Criminal Matters has been in force in Romania since 16 June 1999 but no information is available on experience with its implementation. To date, requests for assistance have been dealt with on the basis of bilateral agreements, reciprocity and international courtesy rules. In 1999 the Ministry of Justice recorded 39 requests for extradition – 28 were made by Romania and the remaining 11 by EU Member States – and no problems were encountered in applying the provisions of the European Convention on Extradition.

22. – The Portuguese Presidency has not cooperated on criminal matters with Romania. Other EU Member States, such as Germany, will be better placed to answer this question.

23. – (a) ratified by Government Order No 90/1999;
   (b) signed;
   (c) signed;
   (d) signed;
   (e) acceded to by Law No 118/1992.

24. – The Portuguese Presidency has not cooperated with the Romanian authorities in this particular field either.

25. – (a) no;
   (b) no;
   (c) no;
   (d) no;
   (e) no;
   (f) no;
   (g) this is not open for ratification by EU applicant states.