

### ANNEX 3: Methodology

The **overall methodological approach** was to address the Evaluation Questions sequentially and chronologically. *The answers to each subsequent question is building upon the findings of its predecessor.* **Question 1** requiring a ***comprehensive inventory of the Transition measures as laid out in Annex VII of the Accession Treaty and acquis introduced since Accession*** and, from this, ***identifying were Structural Instruments have been and could be used to support compliance.*** This was then to be populated with **identification of interventions and their funding allocations from the Structural Instruments, public funds and other sources used to support compliance to respond to evaluation Question 2.** In turn, this would indicate the interventions subject to the requirements of **Question 3** to ***determine the progress made through investments towards compliance with the acquis,*** thereafter to determine the consequences of non-compliance. Establishment of the degree of progress and non-compliance would assist with responding to **Question 4** in determining the ***prospects and priorities for the utilisation of current and future Structural Funds.***

The analysis commenced by addressing **Question 1** and had as starting point the *Action plan for preparing the end of transitional periods* developed under the coordination of the Directorate Europe Strategy 2020 (DSE2020) part of the MAE. This Directorate in the MAE, which in its capacity as National Contact Point for issues regarding the Europa 2020 Strategy, has the task of coordinating the developing and monitoring the National Reform Program (NRP) through which the provision of the Europa 2020 Strategy are applied, holds the responsibility of fulfilling the commitments made in regards to transitional periods resulting from Romania's Accession Treaty with the European Union. As such, MAE issues reports and summaries on the level of preparation for the full application of the *acquis* by Romania as a Member State, which it then forwards to the Council for European Affairs, the Romanian Government and the European Commission. The *Action Plan* will allow for the identification of interventions made with the aid of Structural and Cohesion Funds which support Romania in complying with the Community *acquis*.

The initial assumption was that MAE will represent the main source of information used in identifying those components of the *acquis* that have been added following the Accession to

the EU, through Council Regulations. But after initial research it was apparent that this assumption was not to be realised. An alternative approach was adopted and extensive desk research was undertaken to identify all legislation relevant to Romania through official publications. This was supplemented by initial scoping meetings with the line ministries to ascertain what information was held and by whom.

The Client was requested, and agreed, to provide a letter of introduction to the line ministries with *acquis* compliance responsibilities. The outcome was the compilation of a comprehensive data set of *acquis* subject to transition periods and new outstanding *acquis* requiring compliance. The data set was then analysed along side the current Operational Programmes and regulations to determine which *acquis* legislation was or could be supported by the Structural Instruments.

The response to **Question 2** followed from compiling the inventory of *acquis* granted transition periods and new *acquis* by attaching allocations/budgets to the measures for implementing the *acquis* through Structural Instruments funded interventions and those from public funds and other sources. Although unsurprisingly, at this time it was apparent that the Energy, Environment and Transport sectors were the most challenging and consuming the most funds in respect of *acquis* compliance. It therefore would follow that these sectors would require the majority of project resources and dominate the subsequent findings and reporting. The approach had two tiers: a) one applicable for SCF funded interventions and b) one applicable for other sources.

a) **SCF funded interventions:** The first task was to match the need for investment against a KAI/operation or part of it. Thereafter, a list of (contracted) projects under the Structural Funds was prepared, so as to identify as closely as possible the funds allocated/spent. Apart from official, public data, SMIS was also considered as a source of information, however access was limited. Additional support was sought from the line ministries and managing authorities in providing access to data and gathering the needed information, particularly that at project level. Additionally, the task was to identify which interventions have been undertaken with the purpose of meeting the *acquis* obligations or are *de facto* doing so. In the majority of cases programmes and projects are not specifically designed with the objective of meeting *acquis* compliance. (Obvious exceptions are the provisions under the Sectoral Operational Programmes Environment and Transport where funding was

targeted at the Annex VII transition measures.) Therefore judgements had to be made as to the degree of support the intervention provided for *acquis* compliance. The primary consideration was based upon whether the inclusion or exclusion of an intervention would be misleading in terms of the purpose of the evaluation. In line with the project requirements, relevant funding sources were considered those that can be directly connected to compliance measure/requirements. Projects/investments in the field of administrative capacity which may be developed as support for the implementation of the *acquis* in certain fields did not fall under the scope of the evaluation, since there was not a direct *acquis* requirement and would have not been developed in the absence of OP ACD (these projects are not compliance-driven but rather opportunity driven). As an analogy; replacing a car with a more efficient model could not be considered as an investment in support of compliance with the energy efficiency *acquis* even though it would contribute to the target.

For Structural Instruments there were sources of information, e.g. the SOP Project Status tables, SMIS. Information is published as to other EU funded interventions although some of this information was not up-to-date. In addition the line ministries and authorities were informed as to interventions in their sectors. Of the thousands of projects supported by SCFs (and other IFIs) the majority supported the implementation of the *acquis* and convergence but only a minority supported achieving compliance where there is non-compliance. However, these included major undertakings e.g. transport and environmental obligations.

b) For **non-SCF interventions**, IFIs tend to publish data on their programmes and projects and this provided the basis for further verification and assessment as described above for SCF interventions. However, during the conduct of the evaluation it was borne in mind that there was as possibility that for some interventions data was not so readily available. Also that programmes and projects may have been initiated for reasons not primarily concerned with the *acquis* but nevertheless had an influence. This entailed identifying particular departments and personnel within the line ministries and others with access to data concerning those interventions. It was expected that less documentation would be available for other budgetary sources than is for Structural and Cohesion Funds. To mitigate the risk

that data may not be available or incomplete this issue was raised during interviews with the line ministries and those with horizontal responsibilities.

**Question 3** comprised **3 sub-questions** and, as a task in isolation, would require significant resources. The approach was to initially utilise the existing evaluations of the Operational Programmes and supplement this information with further consultation with the stakeholders. A difficulty was that there were no specific intervention indicators for *acquis* compliance, indicators as there were, were of variable usefulness and too often progress not contemporaneous. However, in a number of cases the relevant information on project progress in terms of current achievements was not available. Whereas Annex VII of the Accession Treaty gave specific targets and timelines for compliance these are not reflected in the project level intervention indicators. Notwithstanding, most of the interventions which were directly related to *acquis* compliance concerned Annex VII issues. However, the data was then analysed and considered in respect of the degree and/or likelihood of *acquis* compliance. The initial findings and conclusions were a specific item to be brought before the focus groups and expert panel.

For the final part of **Question 3 – the consequences of non-compliance with the acquis** – the ramifications were considered from two perspectives; legal consequences and penalties and socio-economic consequences. The general analysis focused on the legal aspects and dealt with potential litigation arising from non-compliance, based on existing case law of the ECJ and potential weaknesses of Romania. The C(2012) 6106 final Communication of the EC on updating of data was used to calculate lump sum and penalty payments to be proposed by the Commission to the Court of Justice in infringement proceedings was taken as main referential in calculating litigation costs. Socio-economic consequences are calculated on the loss of benefits which are invariably attached to major EC initiatives. It was accepted that as a new Member State Romania could be in the position to argue that administrative (negative) consequences do not balance the rather positive outcome that might arise from perpetuating some specific situations existing prior to its EU accession, particularly in areas where competitiveness or management of resources or even sovereign decisions could be at stake (own currency versus euro, decision on national budget and its deficit versus ex-ante approval of national budget first by EU institutions and afterwards by national Parliaments, free commerce within WTO versus preferential commerce according to EU rules and

standards, etc.). However, although such short term benefits could be put forward by any of the Member States at any time, they were not taken into account in this analysis where the focus rather is on the consequences of failure to achieve results that have been negotiated and agreed upon and therefore now represent a standard that has to be fully respected by both partners.

The inventory and data set collated during the early stages of the project assisted with addressing **Question 4** though identifying future needs – i.e. exposed the funding / intervention gaps in *acquis* compliance. The analysis conducted under Question 3 pointed towards shortfalls in achieving *acquis* compliance and the consequences. Also, research and discussions with stakeholders identified where further new *acquis* was to be introduced and where investment would be required to achieve compliance. The initial findings and conclusions were discussed and refined during discussions with sectoral expert stakeholders. These were then items for discussion in the *Focus groups* and *Expert Panel*.