



Business Integrity Country Agenda

research report • 2020

BUSINESS INTEGRITY COUNTRY AGENDA ROMANIA

with the support by the EBRD





Business Integrity Country Agenda

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- report on Romanian business sector integrity -

Bucharest 2020

Transparency International Romania implements Business Integrity Country Agenda (BICA) for Romania, a project coordinated by Transparency International - Secretariat and financed by European Bank for Reconstruction and Development.

The project set up the necessary framework for key stakeholders in business, public sector and civil society to work together in order to develop a reform agenda aimed to reduce corruption in commercial practices and implicitly promoting integrity in the Romanian business environment.

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Acronyms

ASPAAS	Authority for Public Oversight of the Statutory Audit Activity
BICA	Business Integrity Country Agenda
CFAR	Chamber of Financial Auditors of Romania
CECAR	Body of Expert and Licensed Accountants of Romania
CEO	Chief Executive Officer
CPI	Corruption Perception Index
GRECO	Group of States against Corruption's
CVM	Cooperation and Verification Mechanism
GDPR	General Data Protection Regulation
DG	Directorate General
DIOCT	Directorate for Investigating Organized Crime and Terrorism
EITI	Extractive Industries Transparency Initiative
EU	European Union
FDI	Foreign-direct investment
FIU	Financial Intelligence Unit
GDP	Gross Domestic Product
GVA	Gross Value Added
IFA	International Federation of Accountants
IMF	International Monetary Fund
NAD	National Anti-corruption Directorate
NAFA	National Agency for Fiscal Administration
NAG	National Advisory Group
NGO	Nongovernmental Organisation
NIA	National Integrity Agency
OECD	Organisation for Economic Co-operation and Development
SCM	Superior Council of Magistracy
SME	Small and Medium Enterprises
SOE	State Owned Enterprise
TI	Transparency International
TI-Romania	Transparency International Romania
TRAC	Transparency in Reporting on Anti-corruption
UNCAC	United Nations Convention Against Corruption
VAT	Value Added Tax
WB	World Bank

About the BICA assessment

The role of business integrity in fighting corruption

Transparency International defines business integrity as "adherence to globally-recognised ethical standards, compliance with both the spirit and letter of the law and regulations, and promotion of responsible core values (for example honesty, fairness and trustworthiness)." This shows that business integrity, in the broadest sense, encompasses the full range of good business practices commonly associated with corporate social responsibility. More narrowly, it reflects a commitment to abide by minimum legal requirements and norms of ethical business conduct. Organisations that act with integrity follow the law and ethical norms, they treat their employees, customers and business partners fairly and respectfully, they abide by their commitments, and they generally conduct their affairs in a socially responsible manner.

Transparency International recognises that companies are often seen as the supply side of the corruption equation, using corrupt payments to gain undue advantages (for example, in public tenders). But companies can also be victims of weak governance in countries where doing business with integrity may result in losing contracts to corrupt competitors, and victims of extortion requests by corrupt public officials or other business partners. Thus, countering corruption in and from the business sector must target both perspectives: the demand side (the public sector) but also the supply side (the business sector).

The major objective of the BICA is to propose a reform agenda which seeks to improve the business integrity environment in the country and ultimately reduce corruption in the country's business sector. To achieve this, the Business Integrity Country Agenda report will assess not only thematic areas that influence the regulatory and societal environment in which companies are operating, but also the way in which companies themselves contribute to doing business with integrity. BICA therefore offers a comprehensive and unique approach to gathering all the relevant information to provide a credible foundation for action.

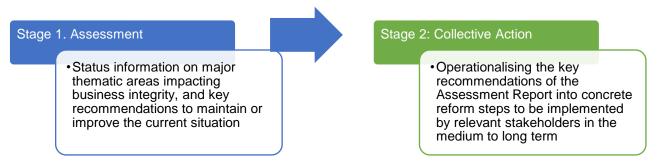
Through a BICA, Transparency International Romania, as well as a variety of stakeholders, such as government, regulatory and law enforcement bodies, investors, business associations, other civil society organisations, and businesses themselves will benefit in two principal ways: as an approach to broadly frame and analyse the issue of business integrity from their country's perspective; and as a multi-stakeholder process for discussing and driving change.

To achieve this objective, the BICA is divided into two major stages: Assessment (Stage 1) and Collective Action (Stage 2).

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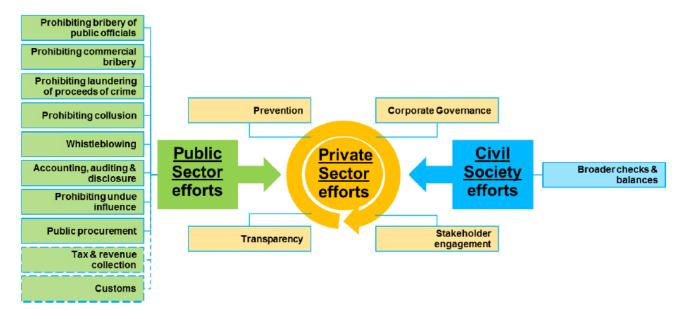
¹ Transparency International, Policy Position, Building Corporate Integrity Systems to Address Corruption Risks, #4/2009

Figure 1. BICA framework



The BICA Assessment Framework is stakeholder group-oriented, assessing a variety of thematic areas that help companies do business with integrity.

Figure 2. BICA Assessment framework



Source: Transparency International BICA Framework

Within the framework of business integrity, recognising the importance of the interactions between stakeholders in the public and private sectors and the civil society, this assessment considers:

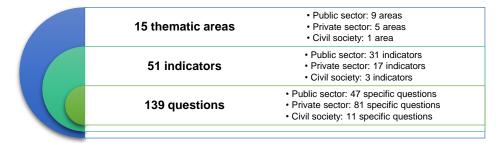
- the environment set by the public sector for companies to do business in
- the public sector's interactions with the business sector
- private sector transparency and self-regulation

- collective and sectorial initiatives already existing at the level of the stakeholders in the public and private sectors as well as civil society

Methodology

The three main stakeholder groups are assessed based on thematic areas. For the public sector, there are nine thematic areas or assessment categories; for the private sector, there are five thematic areas or assessment categories; finally, civil society has just one thematic area or assessment category. Three or more specific indicators are assessed under each thematic area.

Figure 3. BICA Assessment thematic areas, indicators and questions



The BICA indicator assessment process consisted of the following elements: a desk study of relevant existing information, an analysis of corporate anti-corruption measures, related disclosure practices adapted from TI's Transparency in Reporting on Anti-corruption (TRAC) tool and expert interviews to supplement and/or validate information obtained through the desk study.

The BICA assessment indicators comprise a general question and a set of follow-up guidance criteria to be answered with information and evidence. The BICA indicators offer a quantitative summary assessment of the researched data. However, in order to offer a general view of the business integrity situation, the assessment also includes a colour coded scoring system. A numerical scale of 0 to 100 is used, where the minimum value (0) indicates the total absence of the elements assessed and the maximum value (100) indicates fulfilment of all the criteria assessed, based on the follow-up questions. In order to facilitate communication, the results are visualised through common and easily understood "traffic light" symbols: red indicates a 0 score, orange stands for 25, yellow for 50, yellow-green for a score of 75 and green for a 100 score.

Table 1. BICA scoring rules

Scale	Colours	Comment
0		The scoring question is answered with "No, not at all". The evidence collected for the assessment criteria indicates that there are requirements not met at all.
25		The scoring question is answered with " To a limited extent ". The evidence collected for the assessment criteria indicates that few of the requirements are met or that few requirements are met to a limited extent.
50		The scoring question is answered with " To some extent ". The evidence collected for the assessment criteria indicates that roughly half of the requirements are met or that most requirements are met to some extent.
75		The scoring question is answered with " Largely ". The evidence collected for the assessment criteria indicates that many of the requirements are met or most requirements are met to a large extent.
100		The scoring question is answered with "Yes, fully". The evidence collected for the assessment criteria indicates that (almost) all of the requirements are met.

Source: Transparency International BICA Assessment, Supplement #1: Assessment Process

Data for this report have been collected using:

- desk based research of legislation, strategies and public reports;
- desk based research of reports previously drafted on specific issues by TI-Romania and by other civil society organisations;
- interviews with experts in the fields, including members of the National Advisory Group (NAG).

Limitations on the methodology and existing data are related to the fact that business and other private sector entities' initiatives on integrity are, by their nature, decentralised. Moreover, in many cases, transparency is not ensured. The lack of transparency of corporate anti-corruption and integrity programmes – that is a separate indicator in the assessment – is actually an important limitation in assessing many other elements related to business integrity. Due to these limits, in some cases the assessment is only based on expert opinion from interviews.

A key feature of BICA is that the researchers' assessments and observations must be discussed and validated by multiple stakeholders. A National Advisory Group (NAG) that includes 13 members was created for this purpose.²

² representative of the Ministry of Economy (represented by Mr. Cezar Iliu after September 2019 and Mr. Nicolae Bădălău until September 2019), the General Secretariat of the Government (SGG) (former representative: Mr. Toni Greblă), the National Agency for Public Procurement (former representative: Mr. Bogdan Puscas), the Romanian Chamber of Commerce and Industry (CCIR, represented by Mr. Mihai Ivașcu), the Romanian Academic Society (SAR, represented by Mr. Cristian Ghingheş and Mr. Andrei Macsuţ), the Association of Public Managers in Romania (AMR, represented by Mr. Marian Florea), the National Council of Small and Medium Sized Private Enterprises in Romania (CNIPMMR, represented by Mr. Liviu Rogojinaru until November 2019), International Consulting Group SRL (represented by Mr. Mihai Vîlnoiu), AECTRA Agrochemicals SRL (represented by Mr. Dan Popescu), DB Global Technology (represented by Mr. Marian Popa), Sand Hill Petroleum Romania SRL (represented by Ms. Eva Peter), Solutii Avansate (represented by Mr. Sebastian Văduva), Honeywell (represented by Mr. Cătălin Sturza).

As stated in TI's "Conceptual Framework for BICA Assessment, Supplement #1: Assessment Process", the role of the NAG is to:

- advise on research, for the selection or addition of thematic areas, and outreach;
- identify expert interviewees and workshop attendees;
- offer feedback on BICA findings (possible causes and solutions options);
- identify strategic recommendations;
- discuss ways to transform strategic recommendations into an operational reform agenda;
- strengthen the legitimacy and buy-in of key stakeholders into the BICA process and the final report;
- promote BICA findings and recommendations; and
- build up the project partner's network and contacts.

The inaugural NAG meeting was held early in the BICA assessment process to gather feedback on the research methodology.

Executive Summary

The Business Integrity Country Agenda (BICA) aims to reduce corruption in the business environment. It comprises two stages. First, an assessment of the integrity of the business environment in the country, the result of which is this BICA Assessment Report. Second, the transposition of the recommendations based on the assessment findings into an operational reform agenda with recommendations to be implemented through collective action. BICA is based on the idea that collective action, involving the government, the business sector and civil society is more effective in promoting business integrity than actions by individual stakeholders or stakeholder groups acting single-handedly. The involvement of these three stakeholder groups is thus crucial in both stages.

This BICA Assessment, the focus of this report, is organised according to the three main stakeholder areas that form a country's business integrity environment: the public sector, the business sector and civil society. These are divided into 15 thematic areas, comprising a total of 51 indicators. The assessment involves scoring and attributing a colour code to each indicator, based on compliance with the requirements of the questions. The score range is as follows: 0 or red for no positive answer; 25 or orange when few requirements are met; 50 or yellow when half of the answers are positive; 75 or yellow-green when most of the requirements are met; and 100 or green when all requirements are met.

The BICA Assessment Report Romania is the first of its kind. It was carried out by Transparency International Romania and it is based on evidence gathered from multiple sources: legislation, official documents, studies, primary data, stakeholders and interviews with experts³. The process included the selection of a National Advisory Group (NAG), comprising representatives of all stakeholder groups relevant for BICA that would validate the research findings and present recommendations on collective action.

Results of the BICA assessment

General context

In the 1990s Romania transitioned to a democratic state model.⁴ In the 90's, different authors showed the inability of the central state to control local government bodies and the rise of corruption in both local and central government.⁵ In this context, the fight against corruption has been one of the main priorities of the Romanian Government since the beginning of the negotiations for accession to the European Union, and numerous laws and strategic documents have been adopted starting with 2000 or even before, and new specialized anti-corruption bodies have been established to deal

³ Niculae Bădălau, former Minister of Economy, Toni Greblă, former General Secretary of the Government (SGG), Bogdan Puscas, former president of the National Agency for Public Procurement, Mihai Ivașcu, President's Counsellor at the Romanian Chamber of Commerce and Industry (CCIR), Cristian Ghingheş, representative of the Romanian Academic Society (SAR), Marian Florea, President of Association of Public Managers in Romania (AMR), Liviu Rogojinaru, former General Secretary of the National Council of Small and Medium Sized Private Enterprises in Romania (CNIPMMR), Mihai Vîlnoiu, owner of International Consulting Group SRL, Dan Popescu, representative of AECTRA Agrochemicals SRL, Marian Popa, Country manager at DB Global Technology, Eva Peter, compliance officer at Sand Hill Petroleum Romania SRL, Sebastian Văduva, representative of Soluții Avansate SRL, Cătălin Sturza, representative of Honeywell, Alin Mercheş, representative of Mobiversal, Ștefan Vâju, representative of CEO Club Director, Ruben Marian, representative of UtilBen SRL, Adrian Moraru, director of the Institute for Public Policy, Cristian Sas, representative of Medlife, Răzvan Bălaşa, representative of Apostrof SRL, Bogdan Tistea, representative of WebWin SRL.

⁴ Anna Grzymała-Busse and Pauline Jones Luong, *Reconceptualising the State: Lessons from Post-Communism* in "Politics and Society", vol. 30, no. 4, December 2002, pp. 529-554.

⁵ Maria Cirtautas, *The Post-Leninist State: A Conceptual and Empirical Examination* in "Communist and Post-Communist Studies", vol. 28, 1995, pp. 379-392.

with the problem⁶. But, the limited performance in curbing corruption and ensuring judiciary independence and integrity prior to 2006 caused the European Commission (EC) to introduce the Cooperation and Verification Mechanism (CVM) in order to continue the monitoring of the country's performance concerning the Judiciary, and its main corruption related mechanism and institutions ⁷.

Other vulnerabilities are present at citizens' level, as 29% of Romanians admitted in 2015 that they paid a bribe in the previous 12 months, according to the Global Corruption Barometer 2016.8 This data made Romania the European country (EU member state) with the most widespread petty corruption, a sign of systemic corruption. On the other hand 54% of Romanians consider that most or all members of the Parliament are corrupt, indicating an elevated level of high-corruption perceived by the citizens. Besides corruption in the judiciary system, high-corruption and corruption in public administration (targeted by policies monitored by the CVM), Romanian society is facing corruption in the healthcare system, education, police, customs and business, according to the data from 2015-2017 of the Global Corruption Barometer⁹ and other surveys¹⁰. Concerning corruption in public administration, a study on how corruption is reflected by media shows that the most frequent cases of bribery or other corruption forms are reported in relation to issuance of an administrative license, permit or certificate, to public procurement, administrative inspections or to the employment of civil servants.¹¹

Anti-corruption efforts started in 1996 with the adoption of a law regarding the declaration and control of the property of dignitaries, magistrates, civil servants and persons holding management positions in public administration (Law no. 115/1996). The law on access to information of public interest was adopted in 2001 (Law no. 544/2001) and the sunshine law, providing transparency and consultation rules for any normative decision, was adopted in 2003 (Law no. 52/2003). According to these laws, access to information on activities and all documents produced by public institutions and publicly owned companies (except information on personal data, confidential information and sensitive information concerning public safety) is granted, access to information and public participation to decision making is regulated, transparency of assets and interests of public officials and civil servants is ensured. At the same time with the policies ensuring transparency as one of the main instruments in preventing corruption, several laws have been adopted in order

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⁶ In order to implement all the needed reforms, strategic documents have been adopted, starting in 2005: (a) the National Anticorruption Strategy 2005-2007, (b) the National Anticorruption Strategy on Vulnerable Sectors and the Local Public Administration 2005-2020, (c) the National Anti-Corruption Strategy 2012-2015, (d) the National Anti-Corruption Strategy 2016-2020.

According to the presentation of the European Commission: "When they joined the EU on 1 January 2007, Romania and Bulgaria still had progress to make in the fields of judicial reform, corruption and (for Bulgaria) organised crime. The Commission set up the Cooperation and Verification Mechanism (CVM) as a transitional measure to assist the two countries to remedy these shortcomings. The decision to continue assessing Bulgaria and Romania after their accession to the EU shows the EU's commitment to see the two countries develop the effective administrative and judicial systems needed to deliver on the obligations of EU membership and ensure correct application of EU laws, policies and programmes. Progress on judicial reform, corruption and organised crime will also allow Bulgarians and Romanians to enjoy their full rights as EU citizens. In December 2006, the Commission adopted decisions which also set criteria ('benchmarks') for assessing progress." Presentation available at: https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/effective-justice/rule-law/assistance-bulgaria-and-romania_en (Accessed December 19th 2017).

⁸ Transparency International, Global Corruption Barometer 2016, results available online at:

https://www.transparency.org/whatwedo/publication/people_and_corruption_europe_and_central_asia_2016 (Accessed December 19th 2017).

⁹ The latest data in the Global Corruption Barometer referring to corruption prevalence in Romania in different sectors of activity are from 2013. All reports and data from Romania in the Global Corruption Barometer available on Transparency International Romania website:

http://www.transparency.org.ro/politici_si_studii/indici/bgc/2016/index.html (Accessed December 19th 2017).

¹⁰ European Commission, *Special Eurobarometer 397. Corruption*, February 2014, report available online at:

http://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_397_en.pdf (Accessed December 19th 2017).

¹¹ Natalia Milewski, Valentina Dimulescu, *Human Assisted Content Analysis of the print press coverage of corruption in Romania,* report of the Romanian Academic Society and Universita deglu Studi di Perugia, June 2016, report available online at: http://sar.org.ro/english-how-the-media-talks-about-corruption-in-romania-rass-report-for-the-media-corruption-work-package-published/ (Accessed December 19th 2017).

to strengthen the fight against corruption. In 2000, the special law on corruption offences, which complements and circumscribes the provisions of the Criminal Code, was adopted: Law no. 78/2000 on the prevention, detection and sanctioning of corruption, with subsequent amendments and completions. In 2000, the Prosecution office for corruption and organized crime was established through Law 78/2000, which was later reorganized as the National Anti-Corruption Directorate (NAD).

Public Sector Assessment

The scores for the public sector are as follows:

	0	25	50	75	100						
1	0	verall s	core: 63			PUBLIC SECTOR					
1.1.						Prohibiting bribery of public officials					
1.1.1.						Laws prohibiting bribery of public officials					
1.1.2.						Enforcement of laws prohibiting bribery of public officials					
1.1.3.						Capacities to enforce laws prohibiting bribery of public officials					
1.2.						Prohibiting commercial bribery					
1.2.1.						Laws prohibiting commercial bribery					
1.2.2.						Enforcement of laws prohibiting commercial bribery					
1.2.3.						Capacities to enforce laws prohibiting commercial bribery					
1.3.						Prohibiting laundering of proceeds of crime					
1.3.1.						Laws prohibiting laundering of proceeds of crime					
1.3.2.						Enforcement of laws prohibiting laundering of proceeds of crime					
1.3.3.						Capacities to enforce laws prohibiting laundering of proceeds of crime					
1.4.						Prohibiting collusion					
1.4.1.						Laws prohibiting collusion					
1.4.2.						Enforcement of laws prohibiting collusion					
1.4.3.						Capacities to enforce laws prohibiting collusion					
1.5.						Whistleblowing					
1.5.1.						Whistleblowing laws					
1.5.2.						Enforcement of Whistleblowing laws					
1.6.						Accounting, auditing and disclosure					
1.6.1.						Accounting and auditing standards					
1.6.2.						Enforcement of accounting and auditing standards					
1.6.3.						Professional service providers					
1.6.4.						Beneficial ownership					
1.7.						Prohibiting undue influence					
1.7.1.						Laws on political contributions					
1.7.2.						Enforcement and public disclosure of political contributions					
1.7.3.						Laws on lobbying					
1.7.4.						Enforcement and public disclosure on lobbying					
1.7.5.						Laws on other conflicts of interest					
1.7.6.						Enforcement and public disclosure of other conflicts of interest					
1.8.						Public procurement					
1.8.1.						Operating environment					
1.8.2.						Integrity of the contracting authorities					
1.8.3.						External safeguards					
1.8.4.						Regulations for the private sector					
1.9.						Taxes and customs					
1.9.1.						Operating environment					
1.9.2.						Integrity of the tax administration authorities					
1.9.3.						External safeguards					

The public sector thematic area covers business integrity issues such as bribery of public officials, commercial bribery, money laundering, economic competition, whistleblowing, auditing and disclosure, undue influence, public tendering, and tax administration. With the exception of lobbying, which is not regulated in Romania, legal provisions for most thematic areas are well or very well suited to the needs of the institutional, economic and social systems to support business integrity.

However, less positive results of the assessment are generated when looking at law enforcement. In most of the cases, there are two reasons for these limits: first, poor institutional capacity including lack of effective training for public servants and officials, and second, the existent oversight institutions are not effective enough and their cooperation with the business sector and civil society is minimal.

Recommendations for the public sector

Short-Term Recommendations

- Develop and apply a performance assessment framework in the prosecution offices to increase their capacity
 to prosecute commercial bribery and other forms of corruption in the private sector.
- Apply an in-depth assessment of vulnerabilities and corruption risks in judicial proceedings to increase the capacity of the judiciary to sanction commercial bribery and other forms of corruption in the private sector.
- Strengthen the legal framework for sanctioning corruption and bribery in the private sector. A comprehensive analysis is needed in order to identify the causes for the very low number of investigations for corruption and bribery in the private sector and solutions to this problem.
- Accompany the transposition of the European Whistleblowing Directive with clear recommendations and guidelines on institutional procedures, in particular for public procurement departments, the tax and customs agency and other institutions in charge of administrative inspections. Of special importance are procedures to facilitate whistleblowing, to investigate the cases raised, and to ensure confidentiality and anonymity of whistleblowers.
- In order to avoid abuses, general guidelines for direct procurement and model procedures should be adopted by the government for the required institutional procedures excepted from Directive 2014/24 and the transposing law on public procurement (Law no. 98/2016) (especially for the procurement mentioned on Annex II of Directive 2014/24). Moreover, for better value for money in procurement, standard costs (as recommended by some European funded projects) could be used in price estimations for public procurement.
- Revise and accelerate the implementation of regulations on revolving doors and "cooling-off periods" to prevent conflicts of interests and corruption.
- Implement the programme for digitalisation of the National Agency for Fiscal Administration and put in place a strong monitoring system to limit personal interactions with taxpayers. For example, digitally connect private companies' invoicing to the fiscal system to increase monitoring capacity of the National Agency of Fiscal Administration, diminish the risk of tax avoidance and limit substantially the risk of corruption related to fiscal inspections on site.
- Ensure independent monitors within the integrity pacts access to tenders' applications during the selection phase (not only after the contract is awarded) and implement integrity pacts for high corruption risk procurements with the participation of all bidders and subcontractors.

 Accelerate the digitalisation of public administration by adopting the Code of Administrative Procedure and elaborate a national compliance register for businesses and citizens to avoid corruption in public controls and inspections made onto private sector entities.

Long-Term Recommendations

- Improve and facilitate the dialogue between the public sector and the business sector to ensure better
 regulations. Ensure the enforcement of the law regarding the transparency of decision-making and the
 requirement of consultation as part of it. Consultations with the private sector need to be effective and honest,
 not only formal.
- Increase the capacity of all anti-corruption and oversight authorities, related to business integrity standards, involving the private sector in order to develop anti-corruption tools and standards. This increased capacity can be achieved through regular training and coaching addressed to all the employees of these anti-corruption and oversight authorities. Special attention requires increasing the capacity of oversight authorities to verify effectively beneficial ownership declarations in accordance to the new money laundering law following the Money Laundering European Union Directive 5.
- Raise awareness and train public servants dealing with public procurement on anti-corruption and integrity. A
 national training programme and partnerships with Universities should be created with that purpose.
- Assess and amend legal provisions to widen the scope and definition of conflict of interests and include all types
 of interests, not only financial interests generated by family relationships. Currently, according to the Romanian
 law, there is a conflict of interest when a public official decides on a contract for a close family member, but
 there is no conflict of interest if the contract beneficiary is a close friend or former business partner.
- Strengthen provisions on the liability of accountants and auditors to ensure better enforcement of accounting and auditing standards. Reintroduction of criminal sanctions needs to be taken into account in this context.
- Simplify the taxation system to ensure better tax collection and the identification of tax errors among the taxpayers.

Private Sector Assessment

The scores for the private sector are the following:

	0	25	50	75	100	
2	O	verall s	core: 27	•		PRIVATE SECTOR
2.1.						Integrity Management
2.1.1.						Provision of policies
2.1.2.						Implementation of practices
2.1.3.						Whistleblowing
2.1.4.						Business partner management
2.2.						Auditing and Assurance
2.2.1.						Internal control and monitoring structures
2.2.2.						External audit
2.2.3.						Independent assurance
2.3.						Transparency and Disclosure
2.3.1.						Disclosure of anti-corruption programmes
2.3.2.						Disclosure on organisational structures
2.3.3.						Disclosure on country-by-country operations
2.3.4.						Additional disclosure
2.4.						Stakeholder Engagement
2.4.1.						Stakeholder relations
2.4.2.						Business-driven anti-corruption initiatives
2.4.3.						Business associations
2.5.						Board of Directors
2.5.1.						Oversight
2.5.2.						Executive remuneration
2.5.3.						Conflicts of interest

Unlike the public sector that has a relatively well-developed legal framework, aligned with international practices and incentives, few companies in the business sector in Romania have adopted international corporate integrity standards. Initiatives to promote integrity of Romanian companies are rare and weak. Most of the national companies operating locally do not have anti-corruption policies and programmes; however some of the larger companies operating abroad do. In general, even if many entrepreneurs speak out against corruption, this is not reflected in their management strategies. Usually multinational corporations operating in Romania follow their own anti-corruption policies and standards.

Recommendations for the private sector

Short-Term Recommendations

• Medium and large companies (over 50 employees or over Eur10 million turnover or over Eur43 million total assets) should develop, and publish an anti-corruption policy that clearly states their position against corruption. Companies should disclose anti-corruption policies and activities in their annual reports and on their websites. Every business should be guided by rules derived from this policy position, rules which clearly define (un)acceptable practices. Ideally, the implementation of this policy should be overseen by the Board of Directors with execution by the relevant technical staff. Publishing the corporate anti-corruption policy and programmes is important as they generate public awareness on the standpoints of the company on corruption issues.

- Domestic companies, particularly SMEs operating in high corruption areas, should increase business integrity
 by adopting internal policies and procedures, including codes of conduct, whistleblowing channels and other
 anti-corruption measures. In order to make this possible, a public-private partnership or another form of
 inter-sectorial cooperation should establish a national compliance register for SMEs, including all
 compliance obligations and other tools companies can use in order to ensure compliance and integrity.
 Business associations and NGOs can provide guidance.
- Domestic and international companies, especially if they have over 50 employees, should establish anonymous
 and protection mechanisms for whistleblowing so as to encourage employees at all levels to report cases of
 corruption or other wrongdoing.
- Increase transparency in corporate reporting by publicly release companies' reports as well as their annual
 independent audits, conclusions and information on the audit providers. Increased transparency can be
 rewarded by being acknowledged in a public whitelist.
- Business associations should identify benchmarks for business integrity in each industry and acknowledge and reward companies who meet them by giving prizes and creating whitelists. A multistakeholder partnership should be established to operationalise this recommendation.
- Create clear and comprehensive standards to improve transparency in State Owned Enterprises and Municipality Owned Enterprises. The standards used for the assessment of transparency in corporate reporting (TRAC) should be the minimum required.

Long-Term Recommendations

- Companies should require anti-corruption due diligence of their partners and suppliers and create a database of clean companies.
- Business Associations and the Chamber of Commerce should become active in promoting integrity and anticorruption programmes. They should engage with other stakeholders in long-term programmes to promote
 integrity and curb corruption; they should also promote integrity standards among their members, dedicate
 workshops to integrity and compliance issues and engage in dialogue with public institutions to identify the best
 solutions in promoting integrity among businesses.

Civil Society Assessment

The scores for civil society are the following:

	0 25 50 75 100	
3	Overall score: 33	CIVIL SOCIETY
3.1.		Larger verification mechanisms
3.1.1.		Independent media
3.1.2.		Involving civil society in business integrity
3.1.3.		Civil society monitoring of business integrity

Although anti-corruption has been the overarching theme of the Romanian activism in recent years and it has generated impressive public mobilisation and protests, the attention of civil society organisations and the media is on public corruption and much less on business corruption and integrity.

Existing corruption has a large impact on the freedom and quality of media and this undermines the capacity of the press to generate effective momentum for integrity, especially in the business sector. When having limited freedom of choosing the news, large opaque businesses or politicians involved in their editorial decisions, no resources and no expertise to investigate corruption, media outlets cannot play their role in monitoring business integrity and exposing corruption in the private sector. Moreover, corruption of public officials is usually used in political / electoral competition and political actors can be interested in making this type of corruption public. But corruption in the private sector doesn't gain publicity in political disputes. Therefore, the lack of media capacity to build its own agenda weakens it as a watchdog against corruption in the private sector.

On the other hand, using the internet and social media, some NGOs have been able to raise awareness against corruption. However, work on business integrity is scarce and, in many cases, short-term, without long-term vision and strategy. Most NGOs underline the lack of resources when explaining why they do not focus on business integrity. Among other reasons, traditional donors of NGOs in Romania (EEA and Norway grants, European Structural and Investment Funds, private foundations of large companies) do not prioritise business integrity and therefore NGOs do not focus on the issue and, moreover, they don't have the opportunity to build their capacity in the field of business integrity.

Recommendations for civil society

Short-Term Recommendations

- Transparency International Romania should advance the research on civil society, business and public sector
 projects promoting integrity and fighting corruption, and generate multi-stakeholder debates and collective
 agreements on recommendations and concrete actions to improve business integrity.
- In cooperation with the government, the business sector and donors, civil society should promote training supported by scholarships and capacity building in business integrity so as to increase the frequency and quality of media coverage of the business sector.
- Promote a pledge to support (including financial support) independent reviews of corporate governance and integrity (including anti-corruption practices, consumers' rights, employees' rights etc.) by civil society organizations.

• Increase transparency, integrity and governance standards in NGOs.

Long-Term Recommendations

- Build civil society capacity to monitor the business sector through alliances and partnerships with governance oriented civil society organizations and other stakeholders like media organisations, business associations and trade unions.
- Create a trust/fund for investigative journalism with the contribution of companies that prioritise integrity among
 their values; independent management can be a form of funding independent media, particularly the more
 expensive investigative type without the pressure from political parties or particular corporations.

General context of the BICA assessment in Romania

Country context

Current political situation

Romania is the sixth largest country in the European Union in terms of population, with over 19.4 resident inhabitants. According to the 1991 Romanian constitution (amended in 2003), "human dignity, civic rights and freedoms, the unhindered development of human personality, justice, and political pluralism are supreme and guaranteed values."

From 1948 until 1989, the country's political structure was characterised by a one-party socialist republic governed by the Romanian Communist Party as the only legal party. Although it has now been 30 years since the fall of communism, some aspects of Romanian political culture are still marked by the legacy of communist rule.

Currently, Romania's constitutional framework is a semi-presidential republic where the Prime Minister is the head of the government and in charge of most policies, including the economic policy. The President who represents the country internationally and promulgates laws approved by the Parliament, is Commander-in-Chief of the Armed Forces and is responsible for appointing people in key positions, including the head prosecutors of the country. Romania has a multiparty system, and a bicameral Parliament (formed from the Chamber of Deputies and the Senate). According to the constitution, the judiciary is independent of the executive and the legislature.

The Economist Intelligence Unit rated Romania as a "flawed democracy" in 2016¹². A large number of people, most of them part of the middle class, have protested in the biggest Romanian towns during the past years against the ruling Social Democratic government. Under pressure, although with a large majority in the Parliament, the Social Democratic Party has changed three times in three years. After having declined substantially in opinion polls and in the European elections in 2019, the PSD¹³ was ousted via a successful vote of no confidence in October 2019. A minority right-wing government, which took office in November 2019, is in charge of organising local and parliamentary elections in 2020.

Macroeconomic progress in Romania and current economic reforms

A World Bank assessment shows that "since joining the European Union (EU), Romania has been making steady progress, closing the gap with the rest of the EU in terms of GDP per capita and productivity. Nevertheless, despite this positive trajectory, persistent social and regional disparities constitute a long-term development challenge."¹⁴

Romanian economy is a fast developing, upper middle-income mixed economy with a very high Human Development Index and a skilled labour force, ranked 15th in the European Union by total nominal GDP and 10th largest when adjusted by purchasing power parity. The following table shows the main economic indicators in the last 10 years: 2010-2019. For comparison, this is still among the lowest in the EU.

¹³ PSD – the Social Democratic Party

14 https://www.worldbank.org/en/country/romania/overview

¹² https://country.eiu.com/romania

¹⁵ World Economic Outlook Database October 2018 -- WEO Groups and Aggregates Information".

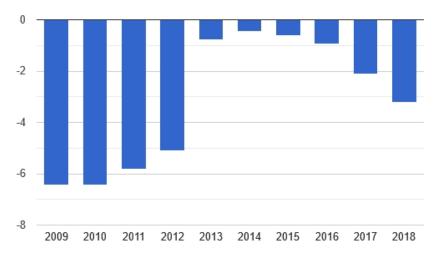
Table 2. GDP, GDP/capita and evolution, 2010-2019

Year	GDP (in Bil. US\$ PPP)	GDP per capita (in US\$ PPP)	GDP growth (real)	Inflation rate (in Percent)	Government debt (in % of GDP)
2009	V 339.8	V 16,623	V -5.9 %	5.6 %	1 5.4 %
2010	334.3	16,470	7 -2.8 %	6.1 %	^ 22.9 %
2011	▲ 348.1	1 7,233	^ 2.0 %	5.8 %	^ 27.3 %
2012	▲ 358.9	1 7,859	1 .2 %	3.3 %	^ 28.9 %
2013	4 377.6	1 8,860	^ 3.5 %	4.0 %	^ 29.5 %
2014	▲ 396.2	1 9,855	△ 3.1 %	1.1 %	^ 29.7 %
2015	4 16.4	^ 20,950	4 .0 %	-0.6 %	2 9.7 %
2016	4 442.0	2 2,369	4 .8 %	− 1.6 %	27.9 %
2017	4 81.5	4 24,508	^ 7.0 %	1.3 %	A 28.3 %
2018	▲ 514.5	^ 28,508	△ 5.0 %	1.3 %	A 28.3 %
2019	▲ 545.5	^ 29,508	4 .0 %	1.3 %	A 28.3 %

Source: International Monetary Fund, "Report for Selected Countries and Subjects". www.imf.org

Despite economic growth, Romanian economy is still very much dependent on imports. The trade balance as percentage of GDP has varied, influenced by the economic crises, the growth after the crisis and the economic policy with fewer incentives for direct domestic and foreign investments since 2016.

Figure 4. Trade balance as percentage of GDP in 2009-2019



Source: TheGlobalEconomy.com of the World Bank

In addition, the economic forecast is not encouraging. The World Bank notes that "economic growth is expected to moderate over the medium term as the available fiscal space shrinks, the labour market increasingly tightens, and global economic conditions worsen." ¹⁶

The most important policy priorities include:

- reform of public institutions, with the central objective of decreasing the administrative burden for citizens and businesses interacting with the state;
- infrastructure development at all levels, supported largely by European funds;
- clarification of the fiscal obligations for large companies, especially in financial, energy and communication sectors, following-up the impact of regulations adopted in December 2018 (Emergency Government Ordinance 114/2018) with a very negative perceived impact over these sectors.

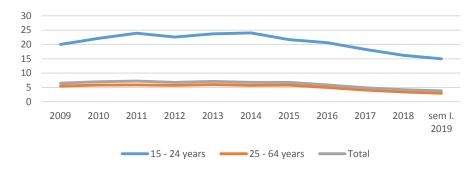
There are also several other policy priorities with potentially important effects on the integrity system and anti-corruption efforts. Demands made by citizens during the protests (and supported by the World Bank¹⁷ and other international organisations¹⁸) include:

- social inclusion policies and policy measures to increase quality of education and health services;
- reform of the judiciary to ensure its independence after several years of unclear political will and influences.

Labour market

The unemployment rate (as calculated by the International Labour Office) increased in Romania between 2008 and 2011 due to the economic crisis, but then decreased steeply since 2014 in a context of economic growth. However, unemployment of young people under 25 is five times higher than the unemployment rate of older persons. Moreover, unemployment in all age groups is over 20% higher in rural areas compared to the urban areas.

Figure 5. Unemployment rate in 2009-2019 in Romania, by age



Source: National Institute of Statistics. Tempo database

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¹⁶ World Bank, Romania - Country partnership framework for the period FY19-FY23.

¹⁸ Including the Council of Europe, UNICEF.

After the economic crisis, the employment rate only started to improve after 2016, as it was linked to increases in the employment rate in rural areas. However, employment rates in 2018 remain significantly lower than during the years immediately preceding the crisis (2007 and 2008). With a very large emigration rate among the work age population¹⁹. in the past few years Romania has experienced what is known as a workforce crisis, with companies having difficulties in finding skilled workers. However, statistical data shows that Romania ranks among the EU member states with low job vacancy rates despite the claims of widespread workforce crisis.²⁰

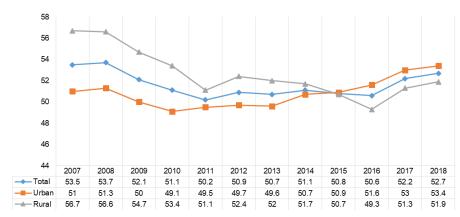


Figure 6. Employment rate in 2007-2018 in Romania, for rural and urban areas

Source: National Institute of Statistics. Tempo database

According to the World Bank assessment, "the country's incomplete and uneven structural transformation is associated with an uneven spatial distribution of opportunities. Although 45 percent of the population reside in rural areas, the urban-rural gap in mean equivalized net income is the second highest in the EU, and mean urban income is almost 50 percent higher than mean rural income."21

On the other hand, Romania ranked first among the EU countries in the increase of the real labour productivity per person employed in 2018 compared to 2010 (+ 42.7%).22

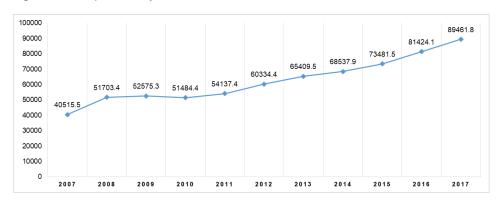
¹⁹ National Institute of Statistics. http://www.insse.ro/cms/ro/tags/comunicat-populatia-rezidenta-si-migratia-internationala Over 3.4 million Romanians emigrated from Romania between 2007 and 2017, accounting for 17% of the country's population, most of the emigrants leaving the country for better working opportunities and conditions.

²⁰ See Romanian Business Review articles online: Romania's workforce crisis eases despite strong official GDP growth rate (20/05/2019) and Romania's workforce shortage eases to 4-year low on record hiring of foreign workers (19/08/2019)

²¹ https://www.worldbank.org/en/country/romania/overview

²² Eurostat. https://ec.europa.eu/eurostat/databrowser/view/tesem160/default/table?lang=en

Figure 7. Work productivity/worker, Romania, 2007-2017



Source: National Institute of Statistics. Tempo database

Foreign-direct investment

In 2018, foreign-direct investment (FDI) net flows reached EUR 5 266 million. The first five countries, ranked by size of FDI, in 2018 are: the Netherlands (23.9% of FDI in 2018), Germany (12.7%), Austria (12.2%), Italy (9.5%) and Cyprus (6.2%).²³

While, in the pre-crisis period, before 2008, FDI inflows averaged 5 to 6% of GDP per year, they have declined to around 2% since 2012. Data monitored by the National Bank of Romania and published annually show that FDI went mostly into manufacturing, construction and the financial sector²⁴. Although their size as a proportion of GDP has diminished, the absolute value of FDI in Romania is rising. Moreover, FDI boosted Romania's exports to 41.4% of GDP in 2017, and enhanced their technological complexity according to the World Bank.²⁵

Table 3. Evolution of foreign-direct investment in Romania, 2010-2019

Year		2010	2011	2012	2013	2014	2015	2016	2017	2018
FDI EUR)	(mil.	52,585	55,139	59,126	59,958	60,198	64,443	70,113	75,851	81,124

Source: National Bank of Romania

While protectionism of Romanian investment is not possible in Romania due to European regulations, foreign investments are encouraged. Romania advanced 37 places, from 73rd in 2012 to 36th in 2016, in the global ranking for ease of doing business, but the situation worsened in 2018 and 2019²⁶. Advantages of the Romanian environment are

²³ National Bank of Romania, "Foreign-direct investment in Romania in 2018", published online at: https://www.bnr.ro/PublicationDocuments.aspx?icid=14364

²⁵ World Bank, Romania - Country partnership framework for the period FY19-FY23, p. 2

²⁴ Ibid.

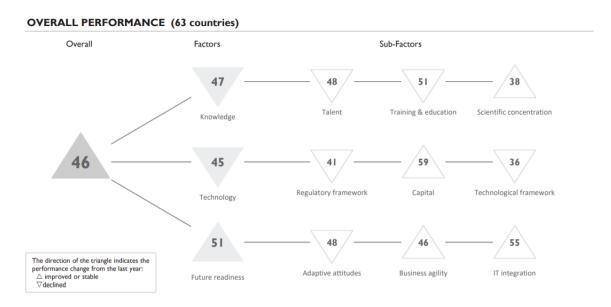
²⁶ The Global Competitiveness Index published by the World Economic Forum covers 138 countries and is based on 12 pillars / sub-indices consisting of: institutions, infrastructure, macroeconomic environment, health and primary education, higher education and training, goods market efficiency, labour market efficiency, financial market development, technological readiness, market size, business sophistication, innovation. Its values are between 1 and 7 (1 indicates the weakest performance, and 7 the best);

lower taxes (social contributions were reduced), simpler payment methods for taxes (through electronic systems), good legislation on the execution of contracts and an improved insolvency procedure (with the introduction of some observation and placement terms in the application of the reorganisation plan).²⁷

Technological readiness

Romania was ranked 46 out of 63 countries in the IMD World Digital Competitiveness Ranking²⁸, a higher position than the one held in previous years. Romania's strengths are internet speed, the number of science graduates and digital skills. On the other hand, the country is lagging behind when it comes to city management, financing technological development and public-private partnerships.

Figure 8. Romania in the IMD World Digital Competitiveness Ranking



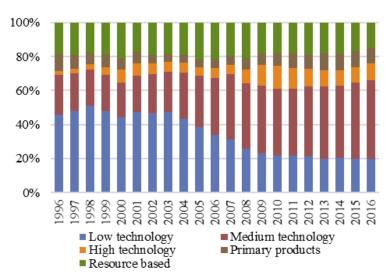
Source: IMD World Digital Competitiveness Ranking

Medium technology exports increased from 23% in 1996 to 46% in 2016. However, high-tech exports have accounted for less than 10 percent of total exports every year over the past two decades.

²⁷ Foreign Investors Council report on FDI development and impact in Romania.

²⁸ IMD World Digital Competitiveness Ranking, https://www.imd.org/wcc/world-competitiveness-center-rankings/world-digital-competitiveness-rankings-2019/

Figure 9. Romania's exports have become more technology intensive



Source: World Bank. Romania - Country partnership

Romanian Digital Competitiveness is slowly progressing according to the IMD World Digital Competitiveness Ranking.

Table 4. Romanian Digital Competitiveness ranking 2015-2019

Romanian rank	2015	2016	2017	2018	2019
Overall	51	49	54	47	46
Knowledge	50	48	47	45	47
Technology	45	46	46	44	45
Future readiness	57	57	59	57	51

Source: IMD World Digital Competitiveness Ranking

Natural resources

Romania is a resource rich country and has considerable economic potential. Due to the country's size and geographical position, there are over 10 million hectares of agricultural land and diverse energy sources (coal, salt, oil, natural gas, hydro, nuclear and wind). Natural resources in Romania offer great opportunities for tourism investments as well.

However, Romania had a resource productivity of EUR 0.74 per kilogram in 2017, the second-lowest in the European Union (EU), according to the Eurostat data.²⁹ Ranking 4th in Europe for gas production and reserves and 5th for oil production reserves, according to the BP Statistical Review of World Energy. While the country is not part of the Extractive Industries Transparency Initiative (EITI), European regulations are applicable.

²⁹ https://ec.europa.eu/eurostat/web/products-eurostat-news/-/DDN-20170704-1?inheritRedirect=true

According to reports of the Competition Council, the sectors most vulnerable to collusion are: natural gas and electricity transport, making natural resources and energy two of the sectors that are most vulnerable to corruption,³⁰

The privatisations of Astra Ploiesti, one of the largest European oil companies after the II World War, operations of the electric energy distribution company in Banat (one of the country's regions), several mining operations, logging and forest exploitation operations generated notorious corruption cases in Romania. The restitution of buildings and farmland, based on a reparative law for the abuses of the communist regime in Romania, also generated famous cases of serious corruption.³¹

Tax system and informal economy

The Romanian tax system includes a 10% flat tax applied to natural persons' revenues and to the profits of enterprises. Very small enterprises pay a 1-3% tax on their total revenues/sales and the VAT is up to 19% with exception of sectors, services and products with lower VAT. As mentioned above, the World Bank assessment of Romania ranks the country 55 out of 190 economies in terms of ease of doing business, according to the latest World Bank annual ratings. The rank of Romania deteriorated to 55 in 2019 from 52 in 2018 and 34 in 2017. The biggest problems companies face in Romania according to the World Bank assessment are getting electricity and dealing with construction permits, while tax is not one of the issues identified as problematic in Romania by the World Bank.

However, due to the social security contributions, including health and retirement insurances, Romania has the highest labour taxation rate (40.85%, as a share of the minimum gross wage) out of the 26 countries surveyed in the European Union, the European Economic Area and Switzerland that have a minimum statutory wage, according to a KMPG report.³²

Romania's underground economy accounted for 22.4% of the official gross domestic product (GDP) in 2016, amounting to EUR 38 billion, according to provisional data provided by the National Statistics Institute (INS), as reported in the online economic journal Profit.ro.³³ Romania ranks fourth (as percentage of GDP) in the EU in terms of the size of the estimated underground economy according to the assessment of the International Monetary Fund.³⁴ In this context, according to the Romanian Fiscal Council's President, an important driver of large informal economy is the tax burden.³⁵

Privatisation

Unlike other countries in Eastern Europe, which took fairly ambitious steps to swiftly privatise key sectors of their economies in the years immediately following the fall of Communism in 1989, Romania's experience with privatisation

³⁰ Competition Council report from 2018, http://www.consiliulconcurentei.ro/uploads/docs/items/bucket13/id13184/raport_anual_2017.pdf, p. 24 and next.

³¹ Since the beginning of the years 2000 the Romanian government acknowledged the problem in the first assessment of the implementation of the first National Anticorruption Strategy (for the period 2001-2005). More details online: https://www.gov.ro/fisiere/programe_fisiere/anticoruptie-2002-2.pdf. Moreover, Transparency International Romania identified the problem and published a guide on preventing corruption in the restitution of buildings and farmland: https://www.transparency.org.ro/publicatii/ghiduri/GFondFunciar.pdf. The same approach was confirmed by Konrad Adenauer Foundation in 2009 in the assessment of corruption risks and vulnerabilities in the judiciary:

https://www.kas.de/c/document_library/get_file?uuid=3aa82403-8d21-bd2f-132c-181792196d98&groupId=252038.

³² KPMG Romania, Minimum wage requirements within Europe in the context of posting of workers, May 2019, page 15. https://home.kpmg/xx/en/home/insights/2011/12/romania-income-tax.html

³³ https://www.romania-insider.com/romanias-underground-economy-2016

³⁴ IFM Working Paper, *Shadow Economies Around the World: What Did We Learn Over the Last 20 Years*? by Leandro Medina and Friedrich Schneider, January 2018, page 18.

³⁵ Ionut Dumitru, Romanian Fiscal Council President, *Underground economy in Romania: causes and consequences*, 2018, page 7.

has been one that is marked by delays. Most important large privatisations took place in the early to mid-2000s. In more recent years, the Romanian governments renewed the privatisation efforts (encouraged also by the EU and IMF) for the remaining sectors that are still largely controlled by the government. One of the most notable of these is the Romanian energy sector.³⁶

In the last 10 years the proportion of employees in the public sector, compared to the private sector (including State owned enterprises) decreased from 17% to 15%. As presented below, still existing (not privatised) State owned enterprises account for 4% of the total number of employees excluding military personnel in Romania. These statistics do not include the army and the military personnel related data that are not provided to the National Institute of Statistics.³⁷

Business sector composition

Domestic industries and the relationship between multinational and national enterprises

Romanian industry was largely established in the period 1945 – 1989, though some sectors, such as the oil sector, have a much longer history. Romanian industry experienced significant structural changes in the post-Communist period. In the early 1990s, many industrial regions were already severely affected by the large waves of restructuring. According to Eurostat, these days the largest industries in terms of their contribution to Gross Value Added (GVA) are food, beverages and tobacco, car and transport, and textile, apparel and clothing.³⁸ In addition, Romania is a regional leader in fields such as IT and motor vehicle production.

UiPath, a tech start-up founded by two Romanian entrepreneurs in Bucharest, has grown into the world's leading robotic process automation (RPA) software company and it is now evaluated at USD 7 billion. Although the company is now based in New York, it still has a significant part of its development team in Romania and its founding shareholders are Romanian. Thus, UiPath can be considered a Romanian company and is currently the most valuable Romanian company.

As the privatisation of the former monopolistic Romanian companies was made through foreign investments, the largest companies in Romania, with few exceptions, are international and have foreign capital. The top 10 companies in Romania, all multinationals, recorded a turnover of RON 131 billion (EUR 28 billion) in 2018, up by 20% compared to 2017.³⁹ Over the last five years, Romania has grown to become an important country in the region for some major international companies. They offer services to regional and European customers from centres located in Romania.⁴⁰

For local companies, 2018 was the first time 15 Romanian domestic entrepreneurial companies exceeded businesses of over 1 billion lei (EUR 0.2 billion). Dedeman Bacău, the network of DIY stores, is the largest entrepreneurial business

³⁶ IMF, 25 Years of Transition. Post-Communist Europe and the IMF

³⁷ National Institute of Statistics. Tempo database: http://statistici.insse.ro:8077/tempo-online/#/pages/tables/insse-table

³⁸ http://ec.europa.eu/DocsRoom/documents/6752/attachments/1/translations

³⁹ Ziarul Financiar, newspaper, 16/06/2019. Carmaker Automobile Dacia, part of French group Renault, maintained its first spot, with a turnover of RON 24.7 billion (EUR 5.3 billion), up by 6.8% year-on-year. The next two companies in the ranking were fuel distributor OMV Petrom Marketing and oil and gas producer OMV Petrom, both controlled by Austrian group OMV, with sales of RON 17.8 billion (EUR 3.8 bn.) each. Oil refiner Rompetrol Rafinare and its distribution arm Rompetrol Downstream were next.

Sixth was German discount retailer Kaufland, which reached a turnover of RON 10.8 billion (EUR 2.3 bn.). Car producer Ford Romania went up to 7th, after starting the production of a new model in Craiova, with a turnover of RON 10.5 billion (EUR 2.25 bn.), more than double compared to 2017. Tobacco distributor British American Tobacco (BAT), fuel distributor Lukoil Romania, and retailer Carrefour completed the top 10.

40 https://www.romania-insider.com/romania-regional-hub

in Romania with 7.2 billion lei business in 2018, up 14% from the previous year, with a net profit of over 1 billion lei and 10,000 employees.

Role of state-owned enterprises

State-owned enterprises (SOE) generate 8% of total output of non-financial corporations in the Romanian economy and account for 4% of the total number of employees. These companies are particularly present in the energy and transport sectors with instrumental input overall in the economy.

On the other hand, they are subsidised by 2% of total government expenditure or 0.7% of GDP. According to the Ministry of Public Finance, these subsidies support over 240 central-government-owned SOEs and over 1,100 local-government-owned SOEs. However, only 27 of these SOEs employ more than 2,000 workers.⁴¹

There are two types of SOEs in Romania. Most of them are commercial companies, but up to 10% of the SOEs are autonomous corporate administrations ("*regii autonome*"), "a specific legal form not subject to regular company law and used for those entities considered "not for privatisation". These include district heating and regional public transport entities."⁴² Another special category is the one of research institutes, publically owned but competing with the private research companies on the market.

According to the same source, in general, Romanian SOEs tends to underperform compared to their private sector counterparts operating in the same sector. One of the reasons for this is that SOEs are larger from the administrative point of view and are typically less modern in their operation.⁴³

Share of small and medium-sized enterprises

Small and medium enterprises are even more important in the Romanian economy. 65.8% of the total number of employees in Romania work for an SME and they generate 52.7% of gross value added to the economy (GVA). These numbers are under the EU averages of 56.4% contribution to GVA and 66.6% of the workforce, but they are close to this average. On the other hand, Romanian SMEs are on average larger, employing an average of 5.5 people, compared to 3.9 - the European average. This makes the average productivity of Romanian SMEs, calculated as value added per person employed, three times under the EU average, at approximately EUR 15,100/person, compared to approximately EUR 44,600/person.⁴⁴

In 2014-2018, overall SME value added in Romania grew by 43.1%, with micro firms generating the highest increase, at 63.1%, while SME employment increased by 7.0%. In 2017-2018, SME value added continued its growth, increasing by 14.6%, while SME employment rose by 2.6%.⁴⁵

⁴¹ ECFIN Country Focus, Volume 12, The role of state-owned enterprises in Romania, 2015, pp. 2-3.

⁴² Ibid.

⁴³ Ibid, p. 4.

⁴⁴ Ibid.

⁴⁵ European Commission, SME Performance Review, https://ec.europa.eu/growth/smes/business-friendly-environment/performance-review_en#sba-fact-sheets

Corruption profile⁴⁶

Romania joined the European Union in January 2007 under the Cooperation and Verification Mechanism (CVM) of the European Union, a transitional measure fixed by the Commission to assist the country in order to get the necessary results in the reform efforts intended to improve the judiciary and tackle corruption. The CVM remained in place for almost 13 years and, although its effectiveness in ensuring good reforms can be disputed, its longevity is a very good indicator of both the severity of the corruption challenges and the complexity of the fight against corruption in Romania.

Relevant corruption-related data

After a long and harsh communist regime in which informal payments were needed in order to overcome shortcomings in the healthcare system, education and daily supplies, as well as a difficult transition to democracy and the rule of law, Romanian society suffers still from both systemic and high-level corruption.

Romania's place in the Corruption Perception Index⁴⁷ ranking progressed from 66 (out of 174 countries) in 2012 to 70 (out of 180 countries) in 2018⁴⁸. Therefore, there is still much work to be done to improve the integrity system and reduce perceptions of corruption, but the trajectory over the last decade has been generally encouraging.

In 2015 alone, 29% of Romanians admitted paying a bribe during the previous 12 months (Global Corruption Barometer⁴⁹ 2016). This data makes Romania the EU member state with the most widespread petty corruption, a sign of systemic corruption. 54% of Romanians consider that most or all members of the Parliament are corrupt, indicating that citizen perceptions of grand corruption are also high.

As a result of its poor performance in curbing corruption and ensuring judiciary independence and integrity prior to 2006, when Romania was negotiating its accession to the EU, some of the issues under discussion remained only a promise. This generated a unique mechanism, without precedent in the EU: Romania, along with Bulgaria, became a member state of the European Union under a safeguard clause. The European Commission through the Cooperation and Verification Mechanism (CVM) continues to monitor the performance of the country concerning the judiciary, and its main corruption related mechanism and institutions⁵⁰. Romania registered constant progress in fighting corruption, visible in all assessments on this issue. Progress has been made in ensuring the transparency of public institutions,

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⁴⁶ The text in this section is an update of the article written by Victor Alistar, Irina Lonean and Ruxandra Soare, 2017, "Romania's corruption. A short overview" and "Romania's anti-corruption fight. A brief history" in Ana Adi and Darren G. Lilleker (eds.) #rezist – Romania's 2017 anti-corruption protests: causes, development and implications, online book.

⁴⁷ The Transparency International Corruption Perception Index (CPI) is probably the most worldwide used measurement of corruption that scores and ranks countries based on how corrupt a country's public sector is perceived to be. It is a composite index drawing on data sources from independent institutions specializing in governance and business climate analysis, surveys and assessments of corruption.

⁴⁸ Complete data available on the website of Transparency International: https://www.transparency.org/research/cpi/overview. In terms of the score: Romania scored 44 out of 100 in 2012, and 47 out of 100 in 2018.

⁴⁹ The full report of the Global Corruption Barometer available on the website of Transparency International: https://www.transparency.org/whatwedo/publication/people and corruption europe and central asia 2016.

⁵⁰ The benchmarks established by the CVM indicate the main vulnerabilities of the judicial system and anti-corruption reforms at the time:

^{1.} the lack of transparency and efficiency of the judicial process, especially related to the limited capacity and accountability of the Superior Council of Magistracy,

^{2.} the need for an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest as unjustified assets (sometimes resulted from corruption), incompatibilities and conflicts of interest were hardly monitored and controlled,

^{3.} high-corruption and low capacity of law enforcement agencies to conduct professional, non-partisan investigations into allegations of high-level corruption,

^{4.} corruption present in public administration, in particular in local administration, with very few effective prevention mechanisms to curb it.

asset and interest disclosures and in prosecuting and sanctioning corruption when discovered. Starting with 2017 the European officials started underlying that Romanian anti-corruption progresses are not irreversible and efforts are still needed to ensure full implementation of all existing anti-corruption mechanisms and to close legal loopholes allowing for corruption impunity⁵¹.

Therefore, corruption remains an important barrier to efficiency in public policies and investments. This applies to both political corruption and petty corruption, as citizens are likely to encounter corruption and bribery in their daily contact with doctors, teachers, civil servants or policemen. While petty corruption still remains a problem, especially in the healthcare system, attention in Romania has been focused on high and political corruption in the last years.

A short review of the National Anti-corruption Directorate (NAD - the special Prosecution Office for high-corruption) shows that in 2018, 556 defendants were tried for alleged corruption, out of which 501 were indicted by prosecution and 55 indicted by admission of guilt. 65 of them are legal entities. 155 of these 556 defendants held public positions of management, control, public dignity or other important functions, including 2 ministers, 2 deputies, 22 mayors and 3 presidents of County Councils (NAD, 2018).⁵² In the last 10 years, several politicians have been prosecuted or convicted⁵³ for using public funds for party funding or for granting important public contracts to businesses that sponsored the political parties in return.

The same year (2018), the National Integrity Agency (NIA) - the administrative institution in charge with verifying assets, incompatibilities and potential conflicts of interest - reported 165 incompatibility cases, 59 conflicts of interest cases, and 6 cases of unjustified assets (NIA, 2018).⁵⁴ Although the activity of these institutions can be criticized for several reasons (as discussed below), their records are an important measurement on the prevalence of corruption in Romania.

Propensity for corruption in the dominant business and social sectors

According to the latest data of the Global Corruption Barometer⁵⁵ and other surveys⁵⁶, corruption in Romania also affects sectors that are not monitored by the CVM, including:

- the healthcare system,
- the education system (schools and universities),
- the police.
- the customs,
- business,

⁵¹ All CVM reports and documents are available on the European Commission website: https://ec.europa.eu/info/effective-justice/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania_en

⁵² NAD Annual Report for 2018 is available online on their website: http://www.pna.ro/bilant_activitate.xhtml?id=44.

⁵³ Among convicted politicians: Adrian Năstase, former Prime Minister, Liviu Dragnea, former leader of the Social Democratic Party, the largest party in Romania until 2019, and former Minister of Regional Development and Public Administration, Elena Udrea, former Minister of Regional Development and Tourism, Monica Iacob Ridzi, former Minister of Youth and Sports, Decebal Traian Remeş and Ioan Avram Mureşan, former Ministers of Agriculture,

⁵⁴ NIA Annual Report for 2018 is available online on their website:

https://www.integritate.eu/Files/Files/Noutati/Raport_Activitate_Anual_ANI_2018.pdf

⁵⁵ Latest data referring to corruption prevalence in Romania in different sectors of activity in the Global Corruption Barometer are from 2013. All reports and data from Romania in the Global Corruption Barometer available on the website of Transparency International Romania: http://www.transparency.org.ro/politici_si_studii/indici/bgc/2016/index.html.

⁵⁶ e.g.: Eurobarometer on corruption, February 2014, available online:

http://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_397_en.pdf, Corruption Barometer by INSCOP, commissioned by "Adevărul" (a national Romanian newspaper), available online: http://www.inscop.ro/wp-content/uploads/2013/06/INSCOP-Coruptie.pdf.

- the administrative activity of issuing an administrative license, permit or certificate,
- public procurements,
- administrative inspections,
- the employment of civil servants and other human resource procedures in public institutions.⁵⁷

The health and education system, as well as large infrastructure and IT projects have been affected by corruption in public procurement according to communications and reports made by the National Anti-corruption Directorate (specialised anti-corruption prosecution office) and the media.

The administrative activity of issuing administrative licenses, permits or certificates, as well as the administrative inspections (or the economic police or customs inspections) present important risks. Recent events in Romania (since 2015) showed how corruption in these sectors affects people lives and businesses and can be deadly.⁵⁸

Anti-corruption public policy and measures

The fight against corruption has been one of the main priorities of the Romanian Government since the beginning of the negotiations for accession to the European Union. In order to implement all the needed reforms, strategic documents have been adopted, starting in 2005. No strategy has been fully implemented within its proposed time framework, as both government and independent assessments indicate.⁵⁹

Romania has signed and ratified international conventions against corruption, including the United Nations Convention against Corruption and the Criminal Law Convention on Corruption and the Civil Law Convention on Corruption of the Council of Europe. Even before these conventions, the first steps in corruption prevention had been taken, including:

- in 1996 the law on declarations of assets and interests submitted by civil servants and public officials was adopted (Law no. 115/1996);
- the Freedom of Information law was adopted in 2001 (Law no. 544/2001);
- the "sunshine law", regulating transparency and consultation for any normative decision, was adopted in 2003 (Law no. 52/2003).

Cumulatively, these laws regulate access to information on the activities of and all documents produced by public institutions and publicly owned companies (with generally clear exceptions on personal data, confidential information and sensitive information concerning public safety). This legislation also regulates access to information and public participation in decision making as well as ensuring transparency of assets and interests of public officials.

Several other laws have been adopted in order to strengthen the fight against corruption. These include the special law on corruption offences (Law no. 78/2000), which complements and circumscribes the provisions of the Criminal Code and several laws amending both the provisions on corruption offences and regulations regarding the declaration of assets and interests. Amendments have been adopted in order to clarify the provisions and to allow enforcement of the laws to all categories of public officials (not only civil servants). Several of these amendments have been made as a

⁵⁷ http://sar.org.ro/english-how-the-media-talks-about-corruption-in-romania-rass-report-for-the-media-corruption-work-package-published/

⁵⁸ Colectiv or Hexipharma cases are important examples for this situation.

⁵⁹ Ministry of Justice (MJ) (2016). *Final report on the implementation of the 2012-2015 National Anticorruption Strategy*. Ministry of Justice (MJ) and Anti-Corruption Network for Eastern Europe and Central Asia (ACN) of OECD (2016). *Independent evaluation of implementation the 2012-2015 National Anti-Corruption Strategy in Romania*.

result of recommendations made by the Group of States against Corruption (GRECO)⁶⁰. On party funding, GRECO's recommendations⁶¹ were only recently implemented, in 2015 and 2016⁶².

A new Criminal Code and a new Criminal Procedure Code entered into force in 2014, continuing to regulate bribery and trading of influence as corruption offences. As a consequence of the 'fast-forward' procedure used for drafting⁶³ and adopting⁶⁴ the codes, several provisions of both codes have been declared unconstitutional by the Constitutional Court. Therefore, amendments are necessary and articles pertinent to the fight against corruption have to be modified (e.g. in relation to conflicts of interest).

In 2000, the Prosecution office for corruption and organized crime was established. The institution was subsequently reorganized and in 2003 the National Anti-corruption Prosecution Office was founded, later to be reorganized as the National Anti-corruption Directorate (NAD). Continuation of the high profile prosecutions is one of the benchmarks of the Cooperation and Verification Mechanism (CVM)⁶⁵, and therefore the work of DNA has been closely monitored by the European Union.

Strengthening the institutional framework, an administrative agency to control assets and interests (incompatibilities and conflicts of interest) was founded by Law no. 144/2007, subsequently heavily amended in 2010. Moreover, special anti-corruption and integrity departments have been established in particularly vulnerable institutions, such as the Ministry of Internal Affair (the General Anti-corruption Directorate, founded in 2005) and the National Agency for Fiscal Administration (the General Directorate of Integrity, founded in 2013).

Other anti-corruption policy measures include:

- Romania has been a member of the Open Government Partnership since 201166,
- an ethics counsellor is appointed in all public institutions,
- declarations of assets and interests are publicly available and searchable on the website of the NIA.
- an electronic Interest Transparency Register was developed in 2016⁶⁷,
- guides for transparency, preventing incompatibilities and conflicts of interest have been developed,
- open data generated by public institutions are published in a centralized form on this 68 website,
- a website centralizing the jobs in public administration has been supported by the government⁶⁹ (after its development as a civil society initiative),

⁶⁰ All GRECO Evaluation Reports and Compliance Reports are available online on GRECO's website: http://www.coe.int/en/web/greco/evaluations/romania (accessed on June, 9 2017).

⁶¹ Recommendations on party funding referred to: clarifying the accounting system for parties' branches and associated organisations, clarifying financial reporting procedures and enforcing the Permanent Electoral Authority's monitoring, supervision and control role, clarifying the loans management, limiting donations that are not registered in bank accounts (in kind or in cash) etc.

⁶² Through Law no. 113/2015 and Law no. 78/2016 amending Law no. 334/2006 on financing the activity of political parties and electoral campaigns and Government Decision no. 10/2016 – the Methodological Norms of the Law no. 334/2006.

⁶³ Drafting the Criminal Code and the Criminal Procedure Code did not comply with the provisions of the law on decisional transparency no. 52/2003, open debates being avoided by the government in order to speed up the law making process. A civil society initiative: Stope the Codes was initiated in 2009 against these procedures, but, despite civil society opposition, the codes drafted in this manner have been adopted.

⁶⁴ The Criminal Code was adopted through a special Parliamentary procedure of Government Assumed Responsibility (art. 114), a procedure that does not allow any debate on the legislation proposed by the government.

⁶⁵ The Commission set up the Cooperation and Verification Mechanism (CVM) as a transitional measure to assist Romania to remedy the shortcomings in the fields of judicial reform and corruption fighting.

⁶⁶ http://ogp.gov.ro/nou/

⁶⁷ www.ruti.gov.ro

⁶⁸ www.data.gov.ro

⁶⁹ www.posturi.gov.ro

Romania was one of the first and few European states with a special law on the protection of whistleblowers (Law no. 571/2004).

Business integrity activities

Business integrity initiatives are rare in Romania. According to interviews, anti-corruption is not a priority of companies in Romania, despite increasing awareness of the business risks of corruption. Therefore, companies do not regularly collaborate with stakeholders from the public sector and/or civil society to strengthen anti-corruption practices. Cooperation between businesses, but also between the private sector, the public one and civil society organisations is limited, rare and undertaken by a small number of companies.⁷⁰

The Ministry of Justice has a dedicated cooperation platform with the business sector under the National Anti-corruption Strategy, including 22 members (e.g. 4 embassies, 3 chambers of commerce, the Foreign Investors Council, the Romanian Bank Association and 10 major companies). The platform has met twice a year since 2012 to discuss topics of common interest for the business community and the public administration. Topics discussed include compliance systems, anti-bribery programs in companies, use of anti-corruption clauses in relationships with suppliers and distributors, public procurement procedures, transparency of lobbying activities and open data. The OECD states that these "discussions have prompted the adoption of preventive measures such as ex-ante control of conflicts of interest in the public procurement and opening of contracts as part of the Open Government commitments." 71

The Centre for Integrity in Business (CIB) is a centre for resources through which Transparency International Romania promotes sustainable solutions for strengthening good governance based on ethical principles and seeks to develop partnerships between the public sector, private sector and civil society. The Centre constitutes a platform for active social dialogue between these three sectors; moreover CIB also supplies the necessary tools to maintain this dialogue at a high level. During these last years, the Centre for Integrity in Business in partnership with top companies from Romania launched an initiative to build a platform for business integrity and transparency. The platform is a network of companies and organisations, sharing the values and the objectives promoted by Transparency International Romania. meeting several times in order to discuss and put forward policy ideas for business integrity. This initiative was launched during a roundtable event in July 2013, which later resulted into a Pact for Integrity and Transparency in the Romanian business sector.72

Another initiative has been initiated by Romanian Business Leaders in partnership with the Romanian Centre for European Policy and with support from Raiffeisen Bank as part of the project Partners for Integrity. This resulted in the creation of the Romanian Clean Business Coalition, which aims to develop an institutionalized partnership between Romanian businessmen who in turn will contribute to the significant reduction of corruption in the Romanian private and public environment.⁷³ The CBC strategy aimed at developing:

- a) a technical component, creating an ethical standard and an ethical certification mechanism, aligned with the European and global standards but also with local specificity:
- b) a component regarding the relationship with public authorities consists of advocacy for proactive measures by the state to reduce the incentives for corruption (the informal group was invited by the Ministry of Justice to participate in the civic platform to oversee the implementation of the National Anti-corruption Strategy);

⁷⁰ Information based on interviews conducted for the present report.

⁷¹ OECD, "Business Integrity in Eastern Europe and Central Asia", 2016. It is worth mentioning that Romania has been a part of the Open Government Partnership since 2011.

⁷² https://www.businessintegrity.ro

⁷³ http://www.cleanbusiness.ro/?page_id=54

- c) a component that addresses the Romanian business environment, based on peer pressure and peer exchange for adopting ethical norms in business;
- d) a component addressed to the general public, based on a public campaign against corruption;
- e) an educational component targeting, in the long term, training programs in companies for the implementation of procedures and standards of ethics management, as well as promoting the development of educational programs on business ethics at the level of the profile universities.

Unfortunately, however, the project seems to have been idle since 2015, as funding and involvement of the key stakeholders did not continue.

BICA assessment

Overall scores of BICA indicators

This section presents a summary assessment of the three main stakeholder groups covered by the BICA assessment: Public Sector, Business Sector and Civil Society, with an overall score for each stakeholder group. The next sections present a more detailed analysis, comprising an assessment of each indicator within the thematic areas.

	0 25	50	75	100	
1	Overall score: 63				PUBLIC SECTOR
1.1.					Prohibiting bribery of public officials
1.1.1.					Laws prohibiting bribery of public officials
1.1.2.					Enforcement of laws prohibiting bribery of public officials
1.1.3.					Capacities to enforce laws prohibiting bribery of public officials
1.2.					Prohibiting commercial bribery
1.2.1.					Laws prohibiting commercial bribery
1.2.2.					Enforcement of laws prohibiting commercial bribery
1.2.3.					Capacities to enforce laws prohibiting commercial bribery
1.3.					Prohibiting laundering of proceeds of crime
1.3.1.					Laws prohibiting laundering of proceeds of crime
1.3.2.					Enforcement of laws prohibiting laundering of proceeds of crime
1.3.3.					Capacities to enforce laws prohibiting laundering of proceeds of crime
1.4.					Prohibiting collusion
1.4.1.					Laws prohibiting collusion
1.4.2.					Enforcement of laws prohibiting collusion
1.4.3.					Capacities to enforce laws prohibiting collusion
1.5.					Whistleblowing
1.5.1.					Whistleblowing laws
1.5.2.					Enforcement of whistleblowing laws
1.6.					Accounting, auditing and disclosure
1.6.1.					Accounting and auditing standards
1.6.2.					Enforcement of accounting and auditing standards
1.6.3.					Professional service providers
1.6.4.					Beneficial ownership
1.7.					Prohibiting undue influence
1.7.1.					Laws on political contributions
1.7.2.					Enforcement and public disclosure of political contributions
1.7.3.					Laws on lobbying
1.7.4.					Enforcement and public disclosure on lobbying
1.7.5.					Laws on other conflicts of interest
1.7.6.					Enforcement and public disclosure of other conflicts of interest
1.8.					Public procurement
1.8.1.					Operating environment
1.8.2.					Integrity of the contracting authorities
1.8.3.					External safeguards
1.8.4.					Regulations for the private sector
1.9.					Taxes and customs
1.9.1.					Operating environment
1.9.2.					Integrity of the tax administration authorities
					· ,

1.9.3.		External safeguards
2	Overall score: 28	PRIVATE SECTOR
2.1.		Integrity Management
2.1.1.		Provision of policies
2.1.2.		Implementation of practices
2.1.3.		Whistleblowing
2.1.4.		Business partner management
2.2.		Auditing and Assurance
2.2.1.		Internal control and monitoring structures
2.2.2.		External audit
2.2.3.		Independent assurance
2.3.		Transparency and Disclosure
2.3.1.		Disclosure of anti-corruption programmes
2.3.2.		Disclosure on organisational structures
2.3.3.		Disclosure on country-by-country operations
2.3.4.		Additional disclosure
2.4.		Stakeholder Engagement
2.4.1.		Stakeholder relations
2.4.2.		Business-driven anti-corruption initiatives
2.4.3.		Business associations
2.5.		Board of Directors
2.5.1.		Oversight
2.5.2.		Executive remuneration
2.5.3.		Conflicts of interest
3	Overall score: 33	CIVIL SOCIETY
3.1.		Larger verification mechanisms
3.1.1.		Independent media
3.1.2.		Involving civil society in business integrity
3.1.3.		Civil society monitoring of business integrity

Public sector assessment

Overall assessment

The public sector thematic area covers business integrity issues such as bribery of public officials, commercial bribery, money laundering, economic competition, whistleblowing, auditing and disclosure, undue influence, public tendering, and tax administration. With the exception of lobbying, which is not regulated in Romania, legal provisions for most thematic areas are well or very well suited to the needs of the institutional, economic and social systems to support business integrity. Romania has particularly good legislation regarding the definition, investigation and sanctioning of bribery and other corruption criminal offences and was among the first European countries to adopt a whistleblowers' protection law for public servants and other employees in public institutions. Anti-money laundering and anti-trust legislation is in line with the European legal framework, although challenges have been raised over the time and the transposition of the European directive and the implementation of the European law on beneficial ownership and State Aid. Moreover, in February 2020 Romania was warned by the European Commission on delays in transposing the Anti Money Laundering Directive 5 (Directive 2918/843).⁷⁴

However, less positive results of the assessment are generated when looking at law enforcement. In most cases, there are two reasons for these limits. Firstly, poor institutional capacity is caused, among others, by lack of effective training for public servants and officials which could not only increase knowledge, but also change attitudes. Moreover, management of human resources in public institutions in Romania is a constant problem, including the recruitment, training, performance evaluation and motivation and rewarding mechanisms.⁷⁵ Secondly, although they exist, oversight institutions are not effective enough and their cooperation with the business sector and civil society is minimal.

⁷⁴ On February 12, 2020, the European Commission sent letters of formal notice to Cyprus, Hungary, the Netherlands, Portugal, Romania, Slovakia, Slovenia and Spain for not having notified any implementation measures for the 5th Anti-Money Laundering Directive. https://ec.europa.eu/commission/presscorner/detail/en/inf_20_202

⁷⁵ Several European Commission and European Council recommendations, including the ones under the European Semester in the period 2015-2019 underline this problem.

Thematic area 1: Prohibiting bribery Laws prohibiting bribery of public officials

The Romanian regulation prohibiting the bribe of public officials can be assessed at 100 out of 100 as the existing provision of the Criminal Code covers the prohibition of:

- active and passive bribery;
- direct and indirect bribery:
- bribery given and received for another natural or legal person;
- money and undue advantages considered all as bribery;
- facilitation payments:
- bribery of national officials, including persons providing public services, civil servants and elected officials;
- bribery of international officials of organisations to which Romania is a party, public officials of a foreign state and jurors from foreign courts. The regulation does not cover officials of international organizations to which Romania is not a party;
- deductibility of bribes for tax purposes is prohibited, but bribes can be deducted for fiscal purposes only if disguised as other kind of payments.

Regulation of bribery, undue advantages and facilitation payments

The Romanian Criminal Code prohibits both active and passive bribery of national and foreign public officials.

Passive bribery of the national and foreign public officials – taking a bribe – is the most serious crime among the corruption offences stipulated in the Criminal Code. According to the legal text in article 289 of the Criminal Code, a public official⁷⁶ is taking a bribe if he asks for, receives or accepts the promise of money or other undue advantages, directly or indirectly, for him or for another person, in order to carry out, to fail to do, to expedite or delay an action that is related to his office duties or contrary to his office duties.⁷⁷ The name of the crime stipulated by the legal text is taking a bribe / bribe taking.

Active bribery, named "giving a bribe", is defined in the same way, by article 290 of the Criminal Code, as the crime of the person offering, giving or promising money or other undue advantages to a public official, directly or indirectly, for him or for other persons, in order determine him to carry out, to fail to do, to expedite or delay an action that is related to his office duties or contrary to his office duties.⁷⁸

Therefore, the provision in the Criminal Code covers bribery prohibition in a very large number of situations:

⁷⁶ Romanian Criminal Code, article 175, paragraph 1: A civil servant, within the meaning of the criminal law, is the person who, permanently or temporarily, with or without remuneration: a) exercises attributions and responsibilities, established by law, in order to carry out the prerogatives of the legislative, executive or judicial power; b) exercises a function of public dignity or a public function of any nature; c) exercises, alone or together with other persons, attributions related to the achievement of the object of activity of an autonomous public company, an economic operator or a legal person with full or majority funded by the state or of a legal person declared to be of public utility. (2) Also is considered civil servant, within the meaning of the criminal law, the person who exercises a service of public interest for which he has been invested by public authorities or who is subject to their control or supervision regarding the performance of that public service.

⁷⁷ Romanian Criminal Code (Law no. 286/2009 with subsequent amendments), Special Part, Title V – Malfeasance while in office and corruption crimes, Chapter I – Corruption crimes, Article 289, paragraph 1.

⁷⁸ Romanian Criminal Code, Special Part, Title V – Malfeasance while in office and corruption crimes, Chapter I – Corruption crimes, Article 290, para, 1.

- both direct and indirect bribery are forbidden, so offering bribe directly to a public official, or to another person in order to transfer it to the public official is considered the same crime of bribery and the same goes for passive bribery;
- both bribery of a public official and of another person, such as a family member, via a public official, is considered the same crime of bribery. This also covers the situation when a public official takes a bribe for a legal person, such as his party. If the payment or advantage is transferred by the public official to another person, including the party, which is another legal person, the deed is still considered bribery;
- the legal provisions prohibiting bribery in the Romanian Criminal Code cover both money transfers and any other undue advantages, even if they are not financial;
- the legal provisions prohibiting bribery in the Romanian Criminal Code cover both facilitation payments and bribes aimed at compelling a public official to perform or to abstain from performing an action, as bribery is also defined as receiving money or other advantages to expedite or delay an action;
- taking and giving a bribe, as defined by the Romanian Criminal Code, refer not only to the transfer of money or other undue advantages, but also to promises, that are criminalized in the same way as actual transfers of advantages.

The Criminal Code stresses that the crime of taking a bribe only applies to public officials in actions related or completely opposed to their public office duties, limiting in very few cases the coverage of the defined crime.⁷⁹

If a public official takes a bribe to convince another official to carry out, to fail to do, to expedite or delay an action, this is another crime: influence peddling, defined by articles 291 and 292 of the Criminal Code in the passive and, respectively, the active form. If jail sanctions as prescribed by the Criminal Code are the criterion, then influence peddling is a less serious crime when compared to bribery.⁸⁰

According to the Romanian Criminal Code, art. 175, the definition of the public official covers all state and local authorities' officials, including elected officials and civil servants, but also persons in charge of providing public services, therefore the definition covers a broad range of bribery situations.⁸¹

The criminal offence does not cover situations of public officials taking bribes for their acts in office if they receive or accept the money or the undue advantages after they leave the public office or retire. In this case the prosecution needs to prove that at least the acceptance of a promise of bribery has been committed during the time the public official was in office.

Regulation of bribery of foreign public officials

Art. 294 of the Criminal Code states that anti-bribery provisions as defined by the abovementioned art. 289 and 290 are also applicable to foreign officials including:

- a) to the civil servants or the persons who carry out their activity on the basis of an employment contract or other persons who exercise similar attributions within an international public organization to which Romania is a party;
- b) members of the parliamentary assemblies of the international organizations to which Romania is a party;

⁷⁹ Romanian Criminal Code, Special Part, Title V – Malfeasance while in office and corruption crimes, Chapter I – Corruption crimes, Article 289, para. 2.

⁸⁰ Romanian Criminal Code, Special Part, Title V – Malfeasance while in office and corruption crimes, Chapter I – Corruption crimes, Article 291 and 292.

⁸¹ Romanian Criminal Code, General Part, Title X – Meaning of some terms or expressions in the criminal law, Article 175.

- officials or persons performing their activity on the basis of an employment contract, or other persons exercising similar duties, within the European Union;
- d) the persons exercising legal functions within the international courts whose competence is accepted by Romania, as well as the civil servants as well as the clerks of these courts;
- e) officials of a foreign state;
- f) members of the parliamentary or administrative assemblies of a foreign state;
- g) jurors from foreign courts.

Bribery of international officials involved in organizations to which Romania is not a party is not prohibited explicitly.⁸² It can, under some circumstances, be incriminated under the same legal provision as commercial bribery.⁸³

Prohibition of bribes deductibility for tax purposes

As any illegal payments, deductibility of bribes for tax purposes is prohibited in the Fiscal Code. Thus, in order to be deductible any bribery needs to be disguised as a legal payment. In this context, it is to be mentioned for instance, that the protocol related expenses can only be deducted in a limited amount calculated as a quota applied to the profit of the enterprise⁸⁴. If proved as bribe, such a payment will be recalculated for the taxes.

Enforcement of laws prohibiting bribery of public officials

The Romanian enforcement of laws prohibiting bribery of public officials can be assessed at 75 out of 100 as the existing provisions of the Criminal Code as well as the practice include:

- the existence of a fairly active specialised prosecution office for corruption offences;
- dissuasive and proportionate sanctions against corruption;
- sanctions applicable to natural and legal persons regardless of the circumstances in which bribery occurs;
- a relatively large number of persons convicted for bribery according to court records, considered however not sufficient compared with the importance and magnitude of the problem in the Romanian society, according to interviews:
- relatively long statutory limitation period, proportionate to the large sanctions provided for by the law. However, in some complex but very important bribery cases, the statutory limitation period proved to be the reason of impunity for bribery of very high public officials;
- proportionate, persuasive and effective mitigation incentives to denounce bribery, but with the existing perverse
 effects of offering impunity to some persons offering bribes in order to have the public officials indicted, investigated
 and sanctioned.

Active enforcement

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The National Anti-corruption Directorate is the Romanian special public prosecution office, in charge of cases of high corruption, meaning cases where at least one of the suspects is a high-ranking official or the value of the bribe or of the

⁸² Romanian Criminal Code, Special Part, Title V – Malfeasance while in office and corruption crimes, Chapter I – Corruption crimes, Article 294.

⁸³ Romanian Criminal Code, Special Part, Title V – Malfeasance while in office and corruption crimes, Chapter II – Malfeasance-while-in-office crimes, Article 308.

⁸⁴ Fiscal Code (Law no. 227/2015 with subsequent amendments), Title II - Profit tax, Chapter II - calculation of the fiscal result, Article 25 – costs, paragraph 3, letter a: - *limited deductibility for: a) protocol expenses up to a 2% quota applied to the accounting profit to which the profit tax expenses and protocol expenses are added. The protocol expenses also include the value added tax expenses, collected in accordance with the provisions of Title VII, for gifts offered by the taxpayer, with a value above 100 lei.*

generated damages exceeds 200.000 Euro.⁸⁵ The National Anti-corruption Directorate has been recognised as a very active anti-corruption enforcement agency by the European Union, through the Cooperation and Verification Mechanism, several international organisations and the Romanian civil society,⁸⁶ although in some cases its own integrity and independence have been questioned.⁸⁷ Interviews conducted with Romanian public officials and business representatives provide evidence of both perspectives, as presented in the section below on capacities to enforce laws prohibiting bribery of public officials.

We analysed the data related to corruption convictions in the activity reports launched annually by the National Anticorruption Directorate, as well as the NAD's online press release archive. This revealed that between 2010 and 2019, there were 2278 final convictions in corruption cases, out of which:

- 720 convictions related to taking/giving a bribe, but no convictions for international officials;
- 348 convictions for abuse of power;

⁸⁵ Government Emergency Ordinance no. 43/2002, regarding the National Anticorruption Directorate establishment, Chapter III – Jurisdiction of NAD, Article 13: the National Anticorruption Directorate is competent with the offences provided for in Law no. 78/2000, with subsequent amendments, committed in one of the following conditions:

a) if, regardless of the quality of the person/s who committed the crime, they caused a material damage greater than the equivalent in lei of 200,000 euros or if the value of the amount or of the good that is the object of the corruption offence is greater than the equivalent in lei of 10,000 euros; b) if, regardless of the value of the material damage or of the value of the amount or the good that is the object of case, the corruption offences are committed by: deputies; senators; Romanian members of the Parliament; European Commission Romanian representatives; Government members; State Secretaries; ministers' advisers; the Chairman of the Legislative Council; the Ombudsman; Presidential Administration officials; the Prime-minister's State advisors; the Governor of the National Bank of Romania and his subordinates; the President and vice-president of the Competition Council; police officers; local officials; lawyers; officials and managers of national companies; the persons mentioned in articles 293 and 294 of the Criminal Code; etc.

⁸⁶ During the last decade, the EU Cooperation and Verification Mechanism established for Romania and Bulgaria (in order to supervise their progress in the fight against corruption) supported the actions of the National Anticorruption Directorate. Find below some examples:

- CVM 2016, Report from the Commission to the European Parliament and the Council on progress in Romania under the Cooperation and Verification Mechanism, pp. 10-11.
- CVM 2017, Report from the Commission to the European Parliament and the Council on progress in Romania under the Cooperation and Verification Mechanism, pp.12-13.
- CVM 2018, Report from the Commission to the European Parliament and the Council on progress in Romania under the Cooperation and Verification Mechanism, pp. 13-15.

Other international reports that have praised the NAD activity were the GRECO reports: some examples can be consulted here:

- Ad hoc Report on ROMANIA (Rule 34), adopted by GRECO at its 79th Plenary Meeting (Strasbourg, 19-23 March 2018), p.3.
- Fourth evaluation round, Corruption prevention in respect of members of parliament, judges and prosecutors, interim compliance report Romania, Adopted by GRECO at its 83rd Plenary Meeting (Strasbourg, 17-21 June 2019), pp. 8-9.
- Third Evaluation Round, Second Compliance Report on Romania, Adopted by GRECO at its 66th Plenary Meeting (Strasbourg, 8-12 December 2014), pp. 8-9.
- Third Evaluation Round, Compliance Report on Romania, adopted by GRECO at its 58th Plenary Meeting (Strasbourg, 3-7 December 2012), pp. 6-7.

The NGO sector in Romania is very active and reacts especially on legal and anti-corruption themes. Among the time, there were both positive and negative opinions regarding the activity of the NAD. As exemplification, there are some NGO press releases that appreciate NAD's activity and results by Justitia Curata (Clean Justice) or Freedom House Romania,

⁸⁷ Assessment of the Romanian anti-corruption system included some international reports that criticized the NAD methods and/or results, such as: *Human Rights in Romania: Systematic violations & the anti-corruption efforts.* This report was launched in 2018 by Human Rights without Frontiers International (HRWF). In 2019, Dr. Martin Mendelski launched his study on Romanian anti-corruption system, criticizing some aspects regarding NAD's activity – more information here: *15 Years of Anti-Corruption in Romania: Augmentation, Aberration and Acceleration,* February 2019, Max Planck Institute for the Study of Societies in Köln, Germany. The Centre for Legal Resources published some NGOs' press releases more critical of NAD's activity or of the legal modifications aiming to strengthen its power.

- 116 convictions for forgery; and
- 34 convictions for conflicts of interest.⁸⁸

For cases that do not qualify as high corruption, investigating competences lie with the General prosecution offices. According to the Ministry of Justice statistics, between January 2016 and September 2019, there were 501 final convictions for taking a bribe and 339 final convictions for giving a bribe.

According to the data received, it appears most cases of bribery successfully prosecuted take place during the processes of:

- public procurement;89
- obtaining permits and approvals;
- avoiding sanctions when controlled or inspected, including fiscal inspections or customs controls etc.⁹⁰

Effective sanctions

Accepting a bribe is stringently punished in Romania, with sentences of 3 to 10 years in prison, depending on the exact circumstances. Giving a bribe is punishable with sentences of 2 to 7 years in prison, as is influence peddling in both the passive and the active form. However, offering a bribe is not considered a crime at all if the person giving the bribe is coerced into paying it by the bribe-taker.

Where no coercion is involved, sanctions for bribery are applicable for any bribery crime, including for:

- active bribery by a person who directs or works, in any capacity, for a private sector entity;
- for insufficient oversight/violation of supervisory duty by any person who directs or manages, in any capacity, a private sector entity.

However, these instances hardly occur in practice. Cases prosecuted by the National Anti-corruption Directorate generally include bribes paid by private business entities to influence decisions in their favour, rather than for public officials to take actions against the interests of their competitors. This has, nonetheless, a strong effect on competition and creates unjustified disadvantages for clean private entities that do not pay bribes.

Legal persons can be prosecuted and sanctioned for offering bribes, and this can be the case of businesses looking for an unlawful advantage in their relationship with public officials and institutions, e.g. in public procurement procedures. Legal persons can also be sanctioned for receiving bribes, e.g. political parties can be criminally sanctioned for indirectly receiving a bribe.

In Romania, legal persons may be held liable for criminal offences committed by any person acting either individually, on the behalf of the legal person or as a member of a management body (board) of the legal person, by managers, decision makers within the legal person or by any person with control over the decisions of the legal person. Moreover, a legal person may be held liable where the lack of supervision or control has been the cause or enabling factor of offences committed by a natural person under its authority on behalf of the respective legal person.⁹¹ For crimes

⁸⁸ NAD Reports available at: https://www.pna.ro/results.xhtml. Online final convictions' archive: https://www.pna.ro/comunicate_condamnari.xhtml ⁸⁹ Final convictions regarding bribery in public procurement cases in NAD press releases at https://www.pna.ro/comunicate.xhtml.

⁹⁰ Final convictions for giving/taking bribery during compliance controls or other routine controls (NAFA, sanitary inspection, customs control, etc.):

https://www.pna.ro/comunicate.xhtml.

⁹¹ The Criminal Code, art. 135. The assessment made in this country report is based on the literature review of publications on the criminal liability of legal persons as follows:

committed in the interest or on behalf of a legal person, the latter may be held liable even if the natural person committing the crimes is not officially and/or legally a representative or employee of the legal person, like the real beneficiary of a business or the 'de facto' administrator/manager. The criminal liability of legal persons in the Romanian legal system is direct, different and autonomous from the criminal liability of the natural persons who actually commit the criminal acts, acting on behalf of the legal person or who have neglected to act, although the two are connected. In this context, causes of impunity, justifications or aggravating circumstances will be examined and decided separately for legal persons and natural persons.

In the Romanian legal system, legal persons may be held liable for any criminal offence perpetuated for their core business activities, in their interest or on their behalf as a result of an intentional decision of management or control bodies or as a result of the lack or deficiency of supervision or control mechanisms⁹⁵.

Legal persons may be held criminally liable for corruption crimes, money laundering, fraud, and crimes against the financial interests of the European Union if the above conditions are met. The primary criminal punishment for legal persons is a monetary fine. ⁹⁶

The exact value of the fine, within the circumstances of the case, in the limits provided by the law and the application of one or more additional sanctions is decided by the judge in accordance with the nature and gravity of the criminal offence.⁹⁷

Moreover, legal provisions on special and extended confiscation and the provisions on money laundering are strong in Romania with considerable chances of recovery of benefits from corruption offences.⁹⁸

Adequate statutory limitation period

Concerning the statute of limitations, terms are directly related to the maximum prison sanction according to the Criminal Code⁹⁹, as shown in the table below.

⁻ Maria D. COSTIN, The Liability of the Legal Person in Romanian Criminal Law, Universul Juridic, Bucharest, 2010;

⁻ Andra-Roxana TRANDAFIR-ILIE, *The Criminal Liability of the Legal Person – Summary of and comment related to caselaw*, C.H Beck, Bucharest, 2013:

⁻ Andra-Roxana TRANDAFIR-ILIE, "The Criminal Liability of the Legal Person" in the Superior Council of Magistracy and the National Institute of Magistracy, Conferences on the New Criminal Code, 2015;

⁻ Anca JURMA, The Legal Person – an active subject of criminal liability, C.H. Beck, Bucharest, 2010

⁹² Ibid.

⁹³ Andra-Roxana TRANDAFIR-ILIE, "The Criminal Liability of the Legal Person" in the Superior Council of Magistracy and the National Institute of Magistracy, Conferences on the New Criminal Code, 2015.

⁹⁴ Andra-Roxana TRANDAFIR-ILIE, *The Criminal Liability of the Legal Person – Summary of and comment related to caselaw*, C.H Beck, Bucharest, 2013.

⁹⁵ Ibid. Romanian criminal law principles impose a subjectivity condition for the guilt of perpetrating a crime. In the case of legal persons, the subjective element is met either if the criminal offence is the result of an intentional decision of the responsible persons or bodies, or the result of the lack of supervision or control mechanisms (including, but not limited to: poor internal organization, insufficient work protection measures, budget constraints) within the legal persons that allowed for the perpetuation of the criminal offence.

⁹⁶ The Criminal Code, art. 136

⁹⁷ The Criminal Code, art. 137

⁹⁸ Transparency International, 2015, National Report on the extended confiscation procedure,

 $https://www.transparency.org.ro/proiecte_incheiate/2015/proiect_1/CountryReportExtendedConfiscationProcedure.pdf\\$

⁹⁹ Art. 115 of the Criminal Code

Penalty	Limitation period
<1 year	3 years
1-5 years	5 years
5-10 years	8 years
10-20 years	10 years
>20 years	15 years

As the maximum prison sentence for bribery of public officials is 10 years, the limitation period is therefore 8 years. Expert assessment is that specific terms for corruption crimes are not needed because the period of statutory limitation is sufficient also for corruption crimes. Authorities should be able to prosecute corruption crimes within that period.¹⁰⁰

Recently, however, the statute of limitations proved to be one of the most important limitations in investigating large corruption and bribery cases.¹⁰¹

Proportionate mitigation incentives

Mitigation incentives are included in the legal framework. However, in corruption cases, the general legal mitigating circumstance - generating a reduced sentence, based on the fact that the perpetrator recognises his crimes and covers all damages - is not applicable in the case of any corruption crime¹⁰².

On the other hand, specifically for giving a bribe, the perpetrator is not punished if he denounces the crime before the responsible authorities have any knowledge of its existence. The exception does not apply to a person taking or accepting a bribe.

Moreover, if coerced to pay a bribe, a person is not considered a perpetrator of the crime. In addition, denunciation of acts of bribery are encouraged by the fact that it is not punished if, and only if, denounced by the person offering the bribe before the responsible authorities have any knowledge about the crime. This provision in art. 290 of the Criminal Code is meant to motivate reporting of acts of corruption against public officials. However, the perception of civil society

¹⁰⁰ Report of Transparency International Italy in partnership with Transparency International Romania on the impact of Statutes of Limitation in Corruption Cases Affecting EU Financial Interests – A European Comparison, 2016, https://www.transparency.org.ro/en/content/impact-statutes-limitation-corruption-cases-affecting-eu-financial-interests-%E2%80%93-european

¹⁰¹ As an example, the Microsoft case is a Romanian corruption scandal about the Microsoft licensing contracts for schools. The criminal investigation began in 2014, when NAD requested the initiation of prosecution proceedings of 10 former ministers. The main charges of the case were power abuse, bribery, influence peddling and money laundering, malfeasance while in office, as well as committing corruption offences by the persons involved. The case was divided in two parts: the first one is about the public procurement launched for the Microsoft license (signed on April 15, 2004) and the second one regards the Digital Educational System Program - that involved an IT package public procurement meant to complete the first part. The general limitation period for the offence of abuse of power is 10 years (According to the decision no. 18/30.01.2014 of the High Court of Cassation and Justice). The problem of the Microsoft case claim being time-barred arose when there were different interpretations regarding the calculation of the 10 years. Initially, the limitation period was calculated from the date the contract payments were made (April 15, 2009 - the date when the actual damage was done) and in this circumstances a Parliament approval was requested for the commencement of the criminal prosecution in 2014 for the MPs involved, when the facts were discovered at a routine control of the Prime minister's control body at the Ministry of Communication and Information Society and then the criminal prosecution started. If the last criminal act would have been considered the contract signing date (21.10.2004 - the date of the last action - moment from which the general limitation period for criminal liability began to run), then one can see that the statute of limitations was in place before the case was opened. The case prosecutor considered that the limitation period is calculated from the moment of the last payment (the end of the crime effects). The case judges issued in 2018 the final decision, establishing that the claim was time-barred, according to the judicial practice, even before the criminal case was opened. In this context, the case prosecutor is investigated by the Judicial Inspection to determine whether or not any disciplinary misdemeanour has been committed. Regarding the Microsoft case, NAD published several press releases on the process stage and documents about the statute of limitations problem. ¹⁰² Art. 75. para (1), point (d) of the Criminal Code.

and business representatives interviewed is that it can have the opposite effect of ensuring impunity for perpetrators of bribery crimes. This is because if bribe-payers feel or know they are in a real danger of being caught, they rush to admit their crime and afterwards they continue to act corruptly in other situations.

Capacities to enforce laws prohibiting bribery of public officials

The Romanian capacities to enforce laws prohibiting bribery of public officials can be assessed at 75 out of 100 as the existing provision of the Criminal Procedure Code, the legal framework organising the Judiciary and practices shows that:

- the specialised prosecution office for corruption offences has a capacity which is above the average capacity of Romanian public institutions and even above that of institutions in the judiciary system, as well as the prosecution offices, but the perception on their independence is affected by the recent scandals related to Romanian judiciary;
- interinstitutional cooperation in Romania is provided by law and supports law enforcement against bribery. However, in practice there can be delays in investigations and limited information exchanges, due to limited data basis interoperability, at the moment. Thus, this is a target of several projects implemented by Romanian authorities;
- international cooperation and mutual legal assistance is provided by the Romanian legal framework and the institutional framework is provided for this cooperation at the level of Ministry of Justice, therefore national authorities cooperate with foreign law enforcement authorities on investigation and enforcement.

Funding and staff for enforcement authorities

The specialised enforcement agency to fight bribery of high public officials is the National Anti-corruption Directorate. On the other hand, for cases that are not high corruption, the investigating competences lie with the General Prosecution Offices.

The National Anti-Corruption Directorate (NAD) within the General Prosecutor's Office is a prosecutor's office specialized in medium and high corruption offences and connected crimes. NAD is an independent entity in relation to other courts, the prosecutor's offices and other public authorities. The NAD is subordinated to the General Prosecutor of Romania and carries out its activity under the authority of the Ministry of Justice. The central structure of NAD (Bucharest) coordinates other 14 sub-bodies, each of them covering a geographical territory under the jurisdiction of a given Court of Appeal. The prosecutors of the National Anti-corruption Directorate are appointed by the decision of the Chief Prosecutor of the Directorate, with the approval of the Superior Council of Magistracy (SCM). The recruitment of the Chief Prosecutor of NAD is done on professional criteria, however without holding an open competition, but at the recommendation of the Ministry of Justice. The chief prosecutor is appointed for a period of 3 years, with the possibility of being reappointed only once, by the President of Romania, after receiving the proposal from the Minister of Justice with the SCM approval. The Chief Prosecutor must have at least 10 years' experience as prosecutor or judge.

¹⁰³ According to the provisions of article 131 of the Constitution, the prosecutors carry out their activity according to the principle of legality, impartiality and hierarchical control under the authority of the Minister of Justice. This does not mean that the Public Ministry and its institutions are subordinated to the Minister of Justice. However, while the judges are independent and tenured, according to the law, the prosecutors, who are also magistrates, enjoy only decisional independence and stability, being under the authority of the Minister of Justice.

The NAD structure includes prosecutors, police officers and technical experts.¹⁰⁴ On the other hand, the Constitutional Court's decisions from 2018 limited the cooperation of NAD with intelligence services for technical capabilities, thus affecting its capacity¹⁰⁵.

Over the years, NAD's budget has increased, and we can observe an upward path of the amount allocated to the activities and sustainability of NAD, including combating corruption actions, staff salaries, and other material needs ¹⁰⁶. Compared to the general image of budgets and funding of the Romanian judiciary, the National Anti-corruption Directorate is in a favourable situation.

Operational independence

Between 2017 and 2019, the laws related to the Romanian judicial system were amended several times and other amendments have been proposed, although not adopted eventually. These regulations affected the capacity and independence of NAD, according to national and international observers. Among the new regulations with impact on the capacity of NAD are the ones on interpreting the constitutional provisions on prosecutors' autonomy¹⁰⁷, the ones on transfer, secondment and delegation of prosecutors limiting the number of prosecutors delegated to work for NAD from other prosecution offices if they do not have a minimum of 10 year seniority and the establishment of a special prosecution office for crimes committed by magistrates: the Criminal Justice Investigation Section.¹⁰⁸

¹⁰⁴ In the NAD structure, there are: 195 positions of prosecutors; 220 posts of judicial police officers; 65 specialist positions; 109 posts of specialized auxiliary staff; 89 economic and administrative staff positions.

¹⁰⁵ A totally different point of view needs to be taken related to this cooperation between NAD and the intelligence services related to the judiciary capacity to monitor activities of the intelligence services and their influence over prosecution and justice overall and the respect of human rights in this case. But for the purpose of this assessment, the fact that NAD's technical capacity has been affected by the recent decisions on its cooperation with intelligence services is important.

Prosecutor's Office attached to the High Court of Cassation and Justice. Annually, at least 2 million lei (approx. 418,217.71 euro) are directed for actions regarding the organization and detection of corruption offenders caught in the act. The budgetary fluctuation of NAD has also experienced decreases in time, but not major, considering the tendency of the national budget. The budget allocated to NAD from 2014 to 2019: 2019 - 174.749.000 lei; 2018 - 176.085.000 lei; 2017 - 176.885.000 lei; 2016 - 124.959.000 lei; 2015 - 127.940.000 lei; 2014 - 90351.000 lei. See details on NAD website at: https://www.pna.ro/bugetul.xhtml.

¹⁰⁷ The Venice Commission suggested that "the independence or autonomy of the prosecutor's office is not as categorical in nature as that of the courts. Even where the prosecutor's office as an institution is independent there may be a hierarchical control of the decisions and activities of prosecutors other than the prosecutor general" In particular, the Venice Commission pointed out that while the amendment of the new Article 3 (1) of Law no. 303/2004 reflected the text of the current Constitution, it indicated a general tendency to reduce the independence of prosecutors, contrary to the Venice Commission's recommendations to Romania. (https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)017-e, Venice Commission's Opinion on Amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organization, and Law No. 317/2004 on the Superior Council for Magistracy in Romania:

https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)017-e).

GRECO notes that the previous wording of Article 3, paragraph (1) of Law no. 303/2004 expressly stated that prosecutors enjoy stability and are independent, according to the law. The amended version of Law no. 303/2004 reduces the prosecutorial independence to the settlement of solutions. In this respect, GRECO refers to the observations of the Venice Commission, reflected in its latest Opinion on the proposed amendments to the three justice laws.

¹⁰⁸ The Venice Commission has criticized as well some of the new regulations, especially the new special prosecutor's section for the investigation of offences in the judiciary. A quite similar section was functioning until 2018 under NAD, but once with the justice laws' changes, the new section is functioning as an independent judiciary organism, under the Public Ministry. The Venice Commission latest Opinion on the amendments to justice laws states that "existing fears that the new structure would serve as an (additional) instrument to intimidate and put pressure on judges and prosecutors - especially if coupled with other new measures envisaged in their respect, such as the new provisions on magistrates' material liability - may be seen as legitimate and should not be ignored."

On the other hand, there have not yet been assessments conducted on the impact of the new regulations on the capacity of the prosecution offices and the anti-corruption fight in Romania. Interviews conducted for this report show a rising concern related to the independence and integrity of the National Anti-corruption Directorate and of the other prosecution offices. These concerns have been reported by some observers of selective investigation and prosecution of only some public officials, favouring the public officials associated with some political parties, as well as negligence and mismanagement of cases ending with acquitting of public officials for mismanagement of evidence or very superficial investigative efforts.¹⁰⁹

Institutional and international cooperation

The cooperation of national anti-corruption agencies, prosecution offices, competition and tax authorities, and financial regulators is provided by the Romanian legal framework and works well according to the international assessments and reviews. However, inter-institutional cooperation represents one of the most vulnerable and underdeveloped elements of the administrative capacity in Romania and generally any process, including investigations of bribery, that need interinstitutional cooperation, requires more time. One of the most important issues related to inter-institutional cooperation refers to the lack of database interoperability when these databases are managed by different institutions. This is a problem and needs to be recognised by the Romanian authorities as several European funded projects are underway to increase inter-institutional cooperation capacities, including creating infrastructure and software to improve interoperability, particularly in terms of data.

Concerning international cooperation and mutual legal assistance, the Romanian Criminal Procedure Code includes specific provisions on international cooperation and mutual legal assistance. A special office is established at the Ministry of Justice for international cooperation. The UNCAC review of the Romanian capacity and practice for international cooperation is positive overall. According to interviews and prior declarations of prosecutors in public events, despite the benefits of international cooperation, when the latter is involved, trials can be very long. However, these cooperation mechanisms have not been used, yet, for the investigation, prosecution and trial of bribery offered to foreign officials.

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See as well: Follow-up Report to the Ad hoc Report on ROMANIA (Rule 34), Adopted by GRECO at its 83rd Plenary Meeting (Strasbourg, 17-21 June 2019), page 7. The GRECO ad-hoc report also criticizes the establishment of the new section: GRECO recommended that the creation of the new special prosecutor's section for the investigation of offences in the judiciary be abandoned.

¹⁰⁹ Criticisms of NAD have been expressed by the Association of Romanian Magistrates, the Association of Romanian Prosecutors and the Association of Judges for Human Rights.

Androniceanu, A. 2008. Management public. Studii de caz din instituţii şi autorităţi ale administraţiei publice, Bucharest: University Publishing House. A Matei, TC Dogar, 2013, "Coordination of Public Policies in Romania. An Empirical Analysis" in *Procedia - Social and Behavioural Sciences*, Volume 81, 28 June 2013, Pages 65-71, https://doi.org/10.1016/j.sbspro.2013.06.389

¹¹¹ A four year long European funded project is implemented by the Communication Ministry since 2016 (project code: SIPOCA 20) in order to ensure e-government and interoperability of data for public administration in Romania and a new draft law on interoperability has been published for public consultation in June 2014 at https://www.comunicatii.gov.ro/mcsi-lanseaza-consultare-publica-project-realizarea-interoperabilitate-institutii/
112 See UNCAC implementation review, 1st cycle report on Romania, Executive Summary published by UNODC:

https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1387398e.pdf

Thematic area 2: Prohibiting commercial bribery Laws prohibiting commercial bribery

Romanian regulation prohibiting commercial bribery can be assessed at 100 out of 100, as the provision of the Criminal Code covers the prohibition of:

- active and passive commercial bribery;
- direct and indirect commercial bribery;
- commercial bribery given and received for another person, natural or legal;
- money and undue advantages considered all bribery, including in the case of commercial bribery;
- deductibility of commercial bribes for tax purposes.

Regulation of bribery, undue advantages and facilitation payments

Corruption offences, including bribery, are prohibited by the Romanian Criminal Code both when the beneficiary is a public official (as presented above in this report under thematic area 1 - prohibiting bribery of public officials) and in the form of commercial corruption and bribery.

The legal solution in the Romanian Criminal Code was to apply almost the same rules as for the bribery of public officials to the commercial bribery or bribery affecting only the relationship between private entities. The Romanian Criminal Code includes a section (title V of the special part) and 2 chapters dedicated to corruption offences and offences related to malfeasance while in office. Most of these offences are related to the conduct of public officials, as defined in art. 175 of the Criminal Code and presented above in this report (under thematic area 1 - prohibiting bribery of public officials). According to art. 308 of the Criminal Code, criminal offences concerning bribery (taking and giving a bribe), influence peddling in the active and passive form, embezzlement, sextortion, abuse of power, and disclosure of non-public information are criminal offences also when committed by, for or in connection to a person associated to a private entity. The provisions cover "persons exercising, permanently or temporarily, with or without remuneration, a task of any kind in the service of" a public official or a legal person. The provision covers broadly the commercial bribery and other forms of corruption, including, as in the case of the offence regulated in the case of bribery of public officials:

- active and passive bribery
- direct and indirect bribery
- bribery given and received for another person, natural or legal
- money and undue advantages, considered all bribery
- facilitation payments

Commercial bribery is also prohibited in relation to the arbitration courts. The arbitrators and clerks can be guilty of taking a bribe, as it is defined by art. 289 of the Criminal Code, in all forms and instances provided by the quoted article (art. 293 of the Criminal Code). This provision is applicable to arbitration courts organised according to the Romanian law, but also according to other legal systems, and therefore includes international officials of arbitration courts.¹¹⁴

¹¹³ Art. 308 of the Criminal Code

¹¹⁴ Art. 293 of the Criminal Code

Prohibition of bribes deductibility for tax purposes

As mentioned above in this report, the deductibility of bribes for tax purposes is regulated. Deductibility of bribes to private entities (commercial bribery) for tax purposes is prohibited. However, as well as the bribery to public officials, bribes to private entities can be deducted for fiscal purposes if disguised as other kind of payments.

Enforcement of laws prohibiting commercial bribery

Romanian regulation prohibiting the bribe of public officials can be assessed at 50 out of 100, as the existing provisions of the Criminal Code and the practice include:

- the existence of a fairly active specialised prosecution office for corruption offences;
- dissuasive and proportionate sanctions for commercial bribe and other corruption offences in the private sector;
- relatively long statutory limitation period, proportionate with the sanctions provided by the law, although shorter limitation periods than in the case of bribery of public officials;
- proportionate, persuasive and effective mitigation incentives to denounce commercial bribery.

However, the number of convictions for commercial bribery is extremely low, showing a lack of interest in these crimes at the level of the prosecution offices.

Active enforcement

For cases of commercial bribery, the investigation competences do not lie with the National Anti-corruption Directorate (the special public prosecution office, in charge with cases of high corruption), but with the General prosecution offices. All findings regarding their activities in general, presented in the previous section of this report are applicable in the case of investigations for commercial bribery.

The general statistics on investigations and convictions for bribery not involving a public official, therefore under art. 308 of the Criminal Code, show that this type of criminal offences is not a priority for prosecutors. Between January 2016 (the first date with comprehensive national registration accessible for this research) and September 20th 2019, only 6 persons were sentenced in Romania for corruption or malfeasance while in office under art. 308 of the Criminal Code, namely corruption or malfeasance while in office committed by persons other than public officials. It is not possible to separate the general statistics on the crime including commercial bribery from the convictions for this crime. However, it is clear that the interest in these crimes at the level of the prosecution offices is extremely low.¹¹⁵

Effective sanctions

This is also underlined by the fact that bribery in the private sector, without involving any public official, and therefore regulated separately under art. 308, is considered a less serious crime and sanctions are smaller than in the case of bribery of the public officials. Art. 308 para.(2) provides that the prison sentence limits applicable to public officials shall be reduced by one third in the case of each criminal offence regulated as such for the private sector, including bribery (taking and giving a bribe), influence peddling in the active and passive form, embezzlement, sextortion, abuse of power,

¹¹⁵ Judiciary statistics has important limits in Romania. It is not possible to register multiple convictions for the same person after one single trail (the plurality of crimes). This may be the explanation for the very small number of convictions. On the other hand, interviews with representatives of the judiciary and the Ministry of Justice show there is, indeed, a very low number of convictions for corruption offences in business to business relations.

and disclosure of non-public information. Thus, a private employee can be sanctioned for receiving a bribe with up to 6.6 years of prison and for paying a bribe to another private employee with up to 4.6 years of prison.

Sanctions are applicable for any bribery crime among private officials, including:

- for bribery against any person who directs or works, in any capacity, for a private sector entity, as a private official can be sanctioned for receiving a bribe to act against his company etc.;
- for insufficient oversight/violation of supervisory duty by any person who directs or manages, in any capacity, a private sector entity, as a private official can be sanctioned for receiving a bribe in order to abstain from oversight or supervision duties over a private entity his company, a supplier or provider, a partner, a branch etc.

Legal persons can be prosecuted and sanctioned for offering bribes, and this can be the case of businesses looking for an unlawful advantage in their relationship with the other private companies, e.g. in competitive procurement procedures¹¹⁶, as mentioned above in more details in this report.

Adequate statutory limitation period

Concerning the statute of limitations, given that sanctions are diminished compared to the bribery of public officials, the limitation period is 5 years. It should still be a long enough period, according to expert opinions, if other elements related to institutional capacity would be in place.¹¹⁷

Proportionate mitigation incentives

Mitigation incentives, including non-punishment for offering bribes, are applied in order to raise the chances of prosecutors to discover the most serious offences. They are applicable in the same way as the ones for the bribery of public officials, presented in the previous section of this report. There are no other provisions related to *mitigation incentives*. A general legal mitigating circumstance: generating a reduced sentence, based on the fact that the perpetrator recognises his crimes and covers all damages, is not applicable in the case of any corruption crime.¹¹⁸

¹¹⁶ Transparency International Romania, *The preventive role of the judiciary in protecting the financial interest of the European Union. A comparative analysis for improved performance*, 2017; Andra-Roxana TRANDAFIR-ILIE, *Răspunderea penală a persoanei juridice – Jurisprudența rezumata și comentata*, C.H Beck, Bucharest, 2013; Andra-Roxana TRANDAFIR-ILIE, "Răspunderea penală a persoanei juridice" in Superior Council of Magistracy and National Institute of Magistracy, *Conferințele Noului Cod Pena*l, 2015

¹¹⁷ Report of Transparency International Italy in partnership with Transparency International Romania on the impact of Statutes of Limitation in Corruption Cases Affecting EU Financial Interests – A European Comparison, 2016, https://www.transparency.org.ro/en/content/impact-statutes-limitation-corruption-cases-affecting-eu-financial-interests-%E2%80%93-european

¹¹⁸ Art. 75, para (1), point (d) of the Criminal Code.

Capacities to enforce laws prohibiting commercial bribery

The Romanian capacities to enforce laws prohibiting commercial bribery can be assessed at 50 out of 100 as the existing provision of the Criminal Procedure Code, the legal framework organising the Judiciary and the practice show that:

- prosecution offices in charge with commercial bribery investigation have average capacity, but the perception on their independence is affected by the recent scandals related to the Romanian judiciary;
- inter-institutional cooperation in Romania is provided by law and supports law enforcement against bribery. However, in practice it can lead to delays in investigations and limited information exchanges, due to limited database interoperability. Thus, this is a target of several projects implemented by Romanian authorities;
- international cooperation and mutual legal assistance is provided by the Romanian legal framework, and the institutional framework is provided for this cooperation at the level of the Ministry of Justice, therefore national authorities cooperate with foreign law enforcement authorities on investigation and enforcement.

Funding and staff for enforcement authorities

Considering the existing capacities to enforce laws prohibiting bribery of public officials, the specialised enforcement agency to fight bribery of high public officials is the National Anti-corruption Directorate. On the other hand, for cases that are not high corruption, the investigating competences lie with the General prosecution offices. Commercial bribery falls under the jurisdiction of the General prosecution offices when below EUR 200,000 (as bribes above this threshold are within NAD competences). As mentioned, the independence and operational autonomy of the prosecutors have been put under pressure and discussion due to the legal amendments in 2017-2019.

In terms of human resources, a higher number of positions are available, compared to the number of magistrates who work, due to the large number of magistrates delegated to the CSM, Ministry of Justice and other public institutions, or due to the poor human resources management policy. In its attempt to solve this problem, the system accepted as practitioners, magistrates with experience between 5 and 10 years, recruited through a simplified procedure that led to accusations of nepotism and a very poor quality of human resources. The law was subsequently amended following accusations and scandals.

Considering the financial capacity of the prosecution offices and the judiciary in Romania, there is no specific regulation regarding the total budget of the judicial system, such as the percentage available from the public budget. In addition, its administration is extremely divided between several structures. The High Court of Cassation and Justice has its own budget included in the public budget. The prosecutor's offices have their own budget, administered by the Public Ministry, and the SCM also has its own, self-managed budget. The budget of the courts (Courts of Appeal, Tribunals and other judicial institutions) is administered by the Ministry of Justice.

Operational independence

GRECO and the Venice Commission alerted the Romanian authorities in their Ad hoc Reports to the fact that allowing hierarchically superior prosecutors to invalidate prosecutorial decisions on the basis of them being ungrounded (in addition to unlawful), in conjunction with the reduced general independence of prosecutors, risks undermining junior prosecutors' ability to investigate/prosecute offences (including corruption) without undue interference.¹¹⁹ Moreover,

¹¹⁹ Opinion of the Venice Commission on Amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organization, and Law No. 317/2004 on the Superior Council for Magistracy in Romania: https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)017-e

GRECO and the Venice Commission are of the opinion that the system of personal liability on judges and prosecutors relating to the exercise of their functions is problematic as it may have a chilling effect on their independence from the executive. For instance, it could be used as a means for undue influence over the judiciary, if it is not accompanied by sufficient safeguards.¹²⁰

Institutional and international cooperation

The assessment of the inter-institutional and international cooperation is in line with the one presented for assessment of the capacities to enforce laws prohibiting bribery of public officials: cooperation mechanisms are in place and legal international cooperation is assessed as good by international organisations. However, these cooperation mechanisms have not been used, yet, for the investigation, prosecution and trial of bribery offered to foreign officials or in international transactions.

Thematic area 3: Prohibiting laundering of proceeds of crime Laws prohibiting laundering of proceeds of crime

Romanian regulation prohibiting laundering of proceeds of crime can be assessed at 75 out of 100, given the extensive scope and coverage of the Romanian regulations concerning money laundering, which transposed European Directives 1-5 in the field of money laundering. Laundering of the proceeds of crime is prohibited under national law, including:

- the conversion, transfer, acquisition, possession or use of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property:
- concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;
- acquisition or possession of property, knowing, at the time of receipt, that such property is the proceeds of crime;
- several forms of participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the abovementioned offences.

However, in February 2020 Romania was warned by the European Commission on delays in transposing the Anti Money Laundering Directive 5 (Directive 2918/843), which resulted in the assessment of this thematic area at 75, not 100.

Regulation of laundering of proceeds of crime

Laundering of proceeds of crime is regulated by a special criminal law in the Romanian legal framework: Law no. 129/2019, transposing European Directives in the field of money laundering¹²¹. The same criminal offences were regulated until 2019 by law no. 656/2002 with subsequent amendments.

Article 49 of the law on preventing and combating money laundering and terrorist financing defines money laundering as:

 a) the exchange or transfer of goods, knowing that they come from the perpetration of crimes, in order to hide or conceal the illicit origin of these goods or in order to help the person who perpetrated the crimes, from which the goods come, to evade from the prosecution, trial or the execution of the sentence;

¹²⁰ https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805afb78

¹²¹ The law for preventing and combating money laundering and terrorist financing, as well as to amend and supplement normative acts.

- b) the concealment or disguise of the true nature, source, location, disposition, circulation or ownership of the goods or rights thereof, knowing that the goods come from the perpetration of crimes;
- c) the acquisition, possession or use of goods by a person, other than the active subject of the criminal offence, from which the goods originate, knowing that they come from the perpetration of crimes. 122

Different aspects of money laundering incrimination

The attempt to commit such a crime of money laundering is regulated and punished as a crime as well. 123

Different forms of participation to the crime including: association with, conspiracy, aiding, abetting, facilitating and counselling the commission of any form of money laundering are crimes as well according to general regulations provided by the Romanian Criminal Code, art. 46-52.

On February 12, 2020, the European Commission sent letters of formal notice to Cyprus, Hungary, the Netherlands, Portugal, Romania, Slovakia, Slovenia and Spain for not having notified any implementation measures for the 5th Anti-Money Laundering Directive. 124 Subsequently, only in July 2020 Romania transposed the 5th Anti-Money Laundering Directive (through Emergency Ordinance of the Government no. 111/2020).

Enforcement of laws prohibiting laundering of proceeds of crime

Romanian enforcement of laws prohibiting laundering of proceeds of crime can be assessed at 75 out of 100. Law enforcement agencies have been established in order to investigate money laundering and they are fairly active. Dissuasive, proportionate, effective sanctions are applied. The statute of limitations is proportionate with the sanctions and assessed as appropriate.

However, the score takes into account the decrease of the control activities of the National Office for Prevention and Control of Money Laundering in 2017 and the lack of transparency of the institution regarding its activity in 2018. The score also takes into account that there are no *mitigation incentives* in order to generate support for the enforcement agencies.

Active enforcement

The National Office for Prevention and Control of Money Laundering is the Romanian Financial Intelligence Unit (FIU). It is responsible for drafting, coordinating and implementing the national system of combating money laundering and terrorism financing. The National Office for Prevention and Control of Money Laundering started its activity in 1999. functioning as a specialized body with legal personality, subordinated to the Romanian Government until November 2019, and since then to the Ministry of Finance. The Office receives, analyses, processes information and notifies, if needed, the General Prosecutor's Office by the High Court of Cassation and Justice.

The main functions of the National Office for Prevention and Control of Money Laundering are the following:

¹²³ Art. 49 para (2) of law no. 129/2019.

¹²² Art. 49 para (1) of law no. 129/2019 to prevent and combat money laundering and terrorist financing, as well as to amend and supplement normative acts.

¹²⁴ https://ec.europa.eu/commission/presscorner/detail/en/inf_20_202

- Receiving, analysing and processing financial information. If the analysis of the data and information processed at the institutional level generates suspicions of money laundering, the Office notifies the General Prosecutor's Office by the High Court of Cassation and Justice;
- Supervision, verification, control and application of international sanctions to the reporting entities which are not, according to the law, under the supervision of another authority;
- Receiving, processing and analysing requests of information from other FIUs and other relevant institutions on money laundering.

In the report of the National Office for the Prevention and Control of Money Laundering in 2016, 8,555 reports regarding suspicious transactions at national level are registered. The number of complaints from 2016 increased by 85.57% compared to the previous year. ¹²⁵ During the same year, a total of Euro 11,629,339 was blocked for 52 suspicious financial transactions. In 2016, 274 entities were controlled and 189 were sanctioned with over 1.35 million lei in fines. The year 2017 proved to generate less impressive results. A total of 244 entities were controlled and 93 were sanctioned with over 845,000 lei in fines. In 2017, 619 cases were forwarded to prosecution under suspicions of crime. On the other hand, only 326 reports regarding suspicious transactions at national level were registered in 2017¹²⁶. A report for 2018 has not been published until the date of the last access on the official website.

At the level of the Directorate for Investigating Organized Crime and Terrorism (DIOCT), the specialised prosecution office for organised crime, including money laundering, a total of 52 cases of money laundering were solved in 2018. Constantly about 2% of the cases investigated by DIOCT are related to money laundering.¹²⁷

Effective sanctions

Money laundering is punished stringently in Romania, with 3 to 10 years in prison, according to the circumstances. Sanctions are applicable for any case of money laundering, including:

- against any person who directs or works, in any capacity, for a private sector entity;
- against legal persons;

Legal persons can be sanctioned for money laundering. Sanction types are presented in the previous section in this report under thematic area 1 - prohibiting bribery of public officials.

Concerning the criminal sentences, between January 2016 (the first date with comprehensive national registration accessible for this research) and September 20th 2019, 213 natural persons and 8 legal persons were convicted and sentenced for money laundering. However, the statistics on convictions does not discriminate between laundering of proceeds of corruption crimes and other money laundering crimes.

¹²⁶ Report of NOPCML for 2017, http://www.onpcsb.ro/pdf/raport%20final%202017.pdf, pp. 11-14.

¹²⁵ Report of NOPCML for 2016, http://www.onpcsb.ro/pdf/sa2016.pdf, p. 5

¹²⁷ DIOCT activity report for 2018, https://www.diicot.ro/images/documents/rapoarte_activitate/raport2018.pdf, pp. 14-18

Adequate statutory limitation period

Concerning the statute of limitations, the limitation period is 8 years¹²⁸. Expert assessment is that specific terms for corruption crimes are not needed because the period of limitation is sufficient also for corruption crimes. Authorities should be able to prosecute corruption crimes within that period. 129

Mitigation incentives

There are no special provisions related to *mitigation incentives* in the special legislation regarding money launderin. There is a general legal mitigating circumstance for criminal investigation in Romania. A person can benefit from a reduced sentence if s/he recognises the crimes and covers all damages. However, this legal mitigating circumstance is not applicable to money laundering, and neither to corruption crimes. 130

Capacities to enforce laws prohibiting laundering of proceeds of crime

Romanian capacities to enforce laws prohibiting laundering of proceeds of crime can be assessed at 75 out of 100. taking into account:

- the latest developments related to the operational independence of the National Office for Prevention and Control of Money Laundering
- de facto limitations of the independence of the Directorate for Investigating Organized Crime and Terrorism during previous years.

Although these institutions have adequate funding, operational independence provided by the law and they do well on internal and international cooperation, their independence can still be limited in practice in some circumstances.

Funding and staff for enforcement authorities

When it comes to curbing money laundering crimes by the prosecutors, elements mentioned above regarding the capacity of the General Prosecutor's Office are applicable. Most of the cases, however, are investigated by the Directorate for Investigating Organized Crime and Terrorism (DIOCT). The number and complexity of cases brought by DIOCT has increased over the years by about 10% every year, while the number of prosecutors has remained broadly unchanged. However, in 2016 and 2018 the structure of the DIOCT was strengthened, by increasing the number of technical staff needed for prosecution, and focusing prosecution activities on terrorism and mafia crimes. Crimes like tax evasion and beggary are no longer prosecuted by DIOCT¹³¹.

However, the decisions made in 2018 concerning the required seniority for prosecutors within the General Prosecutor's Office affect DIOCT as well as the National Anti-Corruption Directorate and the anti-corruption prosecution office.

The same general guarantees, but also limits, related to the independence of the anti-corruption prosecution office and the risks of political interferences apply to the Directorate for Investigating Organized Crime and Terrorism. The risk of

¹²⁸ Criminal Code, art. 115.

¹²⁹ Report of Transparency International Italy in partnership with Transparency International Romania on the impact of Statutes of Limitation in Corruption Cases Affecting EU Financial Interests - A European Comparison, 2016, https://www.transparency.org.ro/en/content/impact-statuteslimitation-corruption-cases-affecting-eu-financial-interests-%E2%80%93-european

¹³⁰ Art. 75, para (1), point (d) of the Criminal Code.

¹³¹ Emergency Government Ordinance no.78 / 2016 approved with modifications by Law no.120/2018. DIOCT activity report for 2018, https://www.diicot.ro/images/documents/rapoarte_activitate/raport2018.pdf, p. 5

political interference in operational matters is nonetheless lower, simply due to the fact that prominent political figures are less at risk of being investigated by DIOCT. However, observers have noted the appointment of political allies to management positions in DIOCT. Moreover, a general recommendation under the Cooperation and Verification Mechanism refers to the development of a clear methodology by the Ministry of Justice for the appointments of chief prosecutors of DIOCT, of the General Prosecution Office and of the National Anti-corruption Directorate. This methodology has not been adopted by the Ministry of Justice yet.

Both the National Office for Prevention and Control of Money Laundering and the DIOCT receive budgets according to their requests to the Ministry of Finance (in a complex budgeting process). It is worth underlying that budgets appear to be appropriate. These institutions are not suffering from underfinancing, but they are also using all the available funding.¹³³

Operational independence

The National Office for Prevention and Control of Money Laundering was operationally independent until November 2019, as it was under the coordination of the Prime Minister, with explicitly regulated operational independence. In, a decision to assign the office to the Minister of Finance, which was issued by the government November 2019, has since arguably undermined its operational independence.

<u>Institutional and international cooperation</u>

The National Office for Prevention and Control of Money Laundering, the Romanian Financial Intelligence Unit (FIU) as well as the Directorate for Investigating Organized Crime and Terrorism cooperate with national and international authorities, in order to operatively fulfil their activities and mission. In order to perform complex analyses and investigations, which involve financial operations with foreign elements, the Romanian FIU and DIOCT are both actively involved on international level, enhancing the exchange of information with foreign institutions which have similar functions, in order to prevent and combat money laundering or terrorism financing, in accordance with legal provisions. The Romanian FIU sends and receives every year about 200 international requests for information in investigations related to money laundering 135. DIOCT deals with 800-1200 deeds that require international cooperation every year according to its reports; however, there is no clear information on how many of these deeds are related to money laundering or to other crimes (terrorism, human or drugs trafficking, smuggling). 136

¹³² The Chief Prosecutor of DIOCT, who was in office between May 2018 and November 2019, has been convicted for favouring and aiding a defendant, former political, in a criminal investigation and trial under the responsibility of DIOCT. She was known as a good friend of prominent political leaders.

¹³³ According to their activity reports.

¹³⁴ Activity reports of the National Office for Prevention and Control of Money Laundering, the Romanian Financial Intelligence Unit (FIU) as well as the Directorate for Investigating Organized Crime and Terrorism.

¹³⁵ http://www.onpcsb.ro/relatii-internationale-onpcsb/schimb-de-informatii

¹³⁶ https://www.diicot.ro/informatii-de-interes-public/raport-de-activitate

Thematic area 4: Prohibiting collusion

Laws prohibiting collusion

Romanian regulations prohibiting the bribe of public officials can be assessed at 100 out of 100, as the provisions of the general and specific legislation cover the prohibition of:

- fixing prices;
- making rigged bids (collusive tenders), considered in some circumstances a crime;
- establishing output restriction quotas;
- sharing or dividing markets by allocating customers, suppliers, territories or lines of commerce.

Administrative and commercial law prohibiting collusion

A special competition law has been in force in Romania since 1996, and has since undergone a large number of amendments, partly due to transposing European law¹³⁷. According to article 5 para. (1) of Law no. 21/1996 with subsequent amendments, "any agreements between enterprises, decisions of associations of companies and concerted practices, which have as their object or effect the hindrance, restriction or distortion of competition on the Romanian market or on a part of it are strictly prohibited". These agreements include in particular those which:

- a) establish, directly or indirectly, purchase or sale prices or any other trading conditions;
- b) limit or control the production, marketing, technical development or investments;
- c) share markets or sources of supply;
- d) includes unequal conditions to trading partners for equivalent benefits, thus creating a competitive (dis)advantage for them;
- e) condition the conclusion of a contract by the partners' acceptance of additional benefits which, by their nature or in accordance with commercial usage, are not related to the object of these contracts.

Any such agreements are strictly prohibited by the law on public procurement¹³⁸, the law on sectorial procurement¹³⁹ and the law on concessions of public goods and services.¹⁴⁰ These operate under the same principles as the one on public procurement, collusive tendering being considered a serious breach of the public procurement principles and regulations.

Criminal law prohibiting collusion

Moreover, the Criminal Code includes a criminal offence regarding public procurement rigging, including collusive tenders, stipulating the following crime: "the act of removing, by constraint or corruption, a participant from a public auction or the agreement between the participants to distort the award price"¹⁴¹

¹³⁷ Law no. 21/1996 on competition with subsequent amendments.

¹³⁸ Law. no. 98/2016 on public procurement with subsequent amendments.

¹³⁹ Law. no. 99/2016 on sectorial procurement with subsequent amendments.

¹⁴⁰ Law. no. 100/2016 on concessions of public goods and services with subsequent amendments.

¹⁴¹ Art. 246 of the Criminal Code.

Enforcement of laws prohibiting collusion

Romanian capacities of enforcement of laws prohibiting collusion can be assessed at 50 out of 100, given that:

- the law enforcement agency the Competition Council shows active enforcement of cases of collusion;
- dissuasive, proportionate, effective sanctions are applied for cases of collusion, but not in cases of collusive tenders;
- statute of limitation periods applies, but they are not appropriate, because they are not long enough
- only one mitigation incentive meant to generate support for the enforcement agencies is applied when cases are identified.

Active enforcement

The Competition Council is responsible for the implementation of the competition law of 1996. Its authority derives from the competition law itself as well as the European law. The Competition Council is an autonomous administrative body aimed at protecting and stimulating competition in order to ensure a normal competitive environment, with a view towards the consumers' interests. The Competition Council's role has two major dimensions: a corrective dimension – restoring and maintaining a normal competitive environment and a preventive dimension – monitoring markets and observing the behaviour of the actors participating in such markets.

The most important areas that were monitored by the Competition Council in the last years are: natural gas, electricity, transport, financial and pharma sectors, and cartel agreements and/or abuse of dominant market position were detected in 95% of the investigated actions. In contrast to previous years, in 2017 the Competition Council registered more violations of the competition rules through cartel agreements and the abuse of dominant position, and agreements concluded between producers and distributors, or similar agreements.¹⁴²

Effective sanctions

The Competition Council publishes annual reports that are meant to monitor the situation of competition in Romania. In 2018, the Competition Council estimated that its activity over the last 20 years had safeguarded 1 billion euros for the benefit of the consumers and collected fines valued at a total of 574 million euros, all with a budget of 158.7 million euros. 143

The Competition Council carefully monitors markets, and, as a result, most of the investigations were initiated ex officio by the Council. In 2017, 156 entities have been sanctioned, resulting in fines of 123,114,190 lei, approximately 27 million euros, the amount of fines increasing by 60% over the previous year. However, the number of sanctioned entities is decreasing compared to the previous years. In 2015 the total number of sanctioned economic agents was 202, in 2016 - 162, and in 2017 - 156, a number that decreased by almost 33% in 2017 compared to 2015. 144 These variations are given by the fact that many of the Council's investigations take more than one year and often sanctions applied are unevenly distributed between different years.

Concerning the collusive tenders, they are theoretically sanctioned by eliminating the bidders from the respective public procurement procedure. However, in order to be able to apply the sanctions, the contracting authority needs to have

¹⁴² Competition Council report from 2018, http://www.consiliulconcurentei.ro/uploads/docs/items/bucket13/id13184/raport_anual_2017.pdf, p. 24 and next

¹⁴³ Reports of the Competition Council, http://www.consiliulconcurentei.ro/ro/publicatii/rapoarte-anuale.html

¹⁴⁴ Ibid.

indications of collusion between bidders and the approval of the Competition Council for the debarment of the bidders. In practice, a very limited number of collusive tenders are prevented by sanctioning the guilty bidders during the procurement procedures. In 2017, the Competition Council finalised two investigations regarding the violation of the competition law in the context of tender procedures. Fines were levied in the total value of 81.1 million lei (approximately 18 million euros) on eight companies. 145

Concerning the criminal sanctioning for bid rigging, the criminal code provides for 1 to 5 years in prison, according to circumstances. Concerning the criminal sentences for this crime, according to the statistics of the Ministry of Justice, there is no conviction for this criminal offence decided by Romanian courts between 2016 and 2019.¹⁴⁶

As the regulation is general, sanctions are applied as well for cases of collusion

- against any person who directs or works, in any capacity, for a private sector entity;
- against legal persons.

Adequate statutory limitation period

According to the competition law of 1996, the statute of limitation for collusion offences sanctioned by the Competition Council with fine is 5 years. According to the Criminal Code, the statute of limitation for bid rigging is 5 years, 147 representing a long enough limitation period, although better deterrence effect could be obtained if a longer statute of limitation period was implemented.

Mitigation incentives

There are no officially regulated mitigation incentives meant to generate support for the enforcement agencies. In the case of the crime of bid rigging, the general legal mitigating circumstance, based on the fact that the perpetrator recognises his crimes and covers all damages, generating a reduced sentence, is applicable.¹⁴⁸

¹⁴⁵ Ihid

¹⁴⁶ There is one conviction decided for public procurement rigging in 2017, but it is related to the deeds of the contracting authority, not collusion between bidders.

¹⁴⁷ Art. 154 of the Criminal Code

¹⁴⁸ Art. 75, para (1), point (d) of the Criminal Code.

Capacities to enforce laws prohibiting collusion

Romanian capacities to enforce laws prohibiting collusion can be assessed at 75 out of 100 given that:

- adequate funding and staff for enforcement authorities are available, however due to the complexity of collusion cases to investigate, special tools (including early warning tools) are needed at the Competition Council.
- enforcement authorities have operational independence;
- national anti-corruption agencies, prosecution offices, competition and tax authorities, and financial regulators cooperate on enforcement;
- national authorities cooperate with foreign law enforcement authorities on investigation and enforcement (mutual legal assistance).

Funding and staff for enforcement authorities

The Competition Council receives its budget according to its requests to the Ministry of Finance and the Parliament (in a complex budgeting process). It's worth underlying that budgets appear to be appropriate. The institution does not suffer from underlinancing, but it is also using all the available funding.¹⁴⁹

The Council consists of 7 members: one president (with the rank of Minister), 2 vice-presidents (with the rank of Secretary of State) and 4 competition counsellors (with the rank of Deputy Secretary of State). The Council members are appointed by the President of Romania, pursuant the proposal of the Government. The term of mandate for the Competition Council members is 5 years, and they may be re-invested not more than once. The Council members do not represent the authority that appointed them, and are independent in decision-making. The status of the Competition Council members is incompatible with any other professional or consultancy activities, with the participation in the management or administration of other public or private entities, with holding public positions or dignities, except for didactic activity in the high-level education institutions. The Council members and the competition inspectors cannot be members of political parties or other political organizations.

The competition inspectors working within the Competition Council, with the exception of novices, are entrusted by Law with special inspection powers for investigating the infringements of Competition Law no. 21/1996, with subsequent amendments and completions, and of Law no. 117/2006 on State Aid, with subsequent amendments and completions.

However, according to interviews and the National Advisory Group input, due to the complexity of the collusion cases to investigate, special tools (including early warning tools) are needed at the Competition Council.

Operational independence

The Competition Council is an autonomous administrative body, institutionally independent form the government based on status and the organisational arrangements and structure. There are no clear indicators of attempts at interference with the activity of the Competition Council, in practice.

To ensure structure stability and concrete independence, the organization and personnel structure, as well the functioning procedures of the Competition Council are stipulated by the law.

¹⁴⁹ According to their activity reports.

Institutional and international cooperation

The Competition Council cooperates with national and international authorities, in order to operatively fulfil its activities and mission. In order to perform complex analyses and investigations, which involve foreign elements, the Competition Council is actively involved at international level, enhancing the exchange of information with foreign institutions which have similar functions.¹⁵⁰ As a result, the Romanian Competition Council participated in over 190 investigations at European level for economic mergers and collusions in 2018 and in over 300 in 2017 and 2016.¹⁵¹

Thematic area 5: Whistleblowing

Whistleblowing laws

Romanian Whistleblowing laws can be assessed at 75 out of 100 given that the law offers:

- a limited coverage of organizations, providing regulation and whistleblower protection only for public sector organisations
- a broad definition of reportable wrongdoing that harms or threatens the public interest
- a limited definition of "whistleblowers", whose disclosures are protected, only to employees and volunteers of public sector organisations (authorities, institutions and other public structures), not covering contractors and other insiders
- protection from direct administrative reprisals and prosecution and if needed witness protection, but not protection from indirect and disguised reprisals
- remedies available only in trials related to labour relationships and labour trials.

The law does not provide

- comprehensive requirements for organisations to have internal disclosure procedures.
- criminal, and/or disciplinary sanctions against those responsible for retaliation.

Whistleblower law coverage

Romania has a specific law on whistleblowing protection since 2004 – Law no. 571/2004 on the protection of personnel within public authorities and institutions disclosing violations of the law, shortly referred to as "Romanian Whistleblower's Law", and was the first country in the continental legislative system to have a comprehensive whistleblower protection act.

Law no. 571/2004 was conceived out of the necessity to regulate the integrity system of the public sector and to have instruments in place that can protect public sector employees from retaliation when faced with the repercussions of reporting an act of corruption to the proper authorities. The law appeared as a result of an advocacy campaign initiated by Transparency International Romania as part of a larger project meant to strengthen and improve integrity in the public sector. 152

¹⁵⁰ Competition Council report from 2018, http://www.consiliulconcurentei.ro/uploads/docs/items/bucket13/id13184/raport_anual_2017.pdf

¹⁵¹ Competition Council reports: http://www.consiliulconcurentei.ro/ro/publicatii/rapoarte-anuale.html

¹⁵² Transparency International Romania, 2009, "Alterative to silence", https://www.transparency.org.ro/en/tironews/alternative-silence-between-casting-and-whistle-0

Broad definition of reportable wrongdoing

The signalling of law infringements which constitute misbehaviours, contraventions or offences shall represent a public interest warning and may refer to law infringements like: corruption offences, offences against financial interests of the European Communities, preferential or discriminating treatments, the breach of the provisions concerning incompatibilities and conflicts of interest, the political bias in exercising the job prerogatives (except the persons elected or assigned on a political basis), negligence or incompetence at work, passing administrative deeds in obscure or private interest, against the public one, bad management of public patrimony, etc.

Definition of "whistleblowers"

According to the Romanian Whistleblower's Law¹⁵³, a whistleblower is the person making a notice in good faith concerning any fact involving a violation of the law, professional ethics or of principles of good administration, efficiency, effectiveness, economic efficiency and transparency. To qualify as a whistleblower, those reporting wrongdoing must be employed in one of the public authorities and institutions within the central public administration, local public administration, in the apparatus of Parliament, the apparatus of Presidential Administration, the apparatus of Government, autonomous administrative authorities, cultural public institutions, education, health and social assistance fields as well as in state-owned companies.

Protection and remedies

The purpose of the Romanian Whistleblower's Law is to protect the public personnel who claims or notifies violations of the law within public institutions and other public units from the ones mentioned above, committed by persons within public institutions and within other budgetary units.

If a disclosure is made, the whistleblower is protected, meaning that he is presumed to have acted in good-faith, until proven otherwise. Also, in case the person denounced by the warning in public interest is a hierarchical direct or indirect superior, or has duties of control, inspection and assessment of the whistleblower, the discipline committee or other similar body shall ensure the protection of the whistleblower, by keeping his/her identity secret. In case of public interest warnings regarding corruption offences or offences against the financial interests of the European Communities, the protection of the witness identification data - Law no. 682/2002 on witness protection - shall be enforced ex officio.

Limitation of the whistleblower law

The law doesn't provide:

- comprehensive requirements for organisations to have internal disclosure procedures (for example, including requirements to establish reporting channels, to have internal investigation procedures, and to have procedures for supporting and protecting internal whistleblowers subsequent to disclosure).
- criminal, and/or disciplinary sanctions against those responsible for retaliation. However, the victim of such retaliation can use general legal provisions on damages in order to apply civil sanctions to the initiator of the retaliation.

Unfortunately, this law does not apply to the private sector¹⁵⁴, which means it provides no legal protection against retaliation for the employees from private companies that decide to report acts of corruption within their workplace.

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¹⁵³ Law no. 571/2004

¹⁵⁴ Law no. 571/2004 has no provision on the private sector.

Private sector employees are thus much less likely to disclose acts of corruption compared to the public sector employees that have the law on their side. Private companies can regulate their own rules regarding whistleblowing, through internal regulations, but this is not mandatory yet (until the transposition of the European Directive on whistleblowing). Therefore, according to each company integrity (or anti-corruption) programme, the definition and channels for whistleblowers can differ.

Enforcement of Whistleblowing laws

Romanian enforcement of Whistleblowing laws can be assessed at 25 out of 100 due to:

- the limited existence of procedures and channels for whistleblowing
- limited transparent and accountable enforcement,
- the lack of anonymous channels for employees to report sensitive information,
- lack of independent agencies to investigate whistleblowers' disclosures
- lack of a special oversight by an independent whistleblower investigation/complaints authority or tribunal.

Romania's Whistleblower Protection Act is strong in theory, covering a broad range of disclosure types and providing protection for whistleblowers in the public sector, but suffers in practice, as many public servants have little to no knowledge of it and public institutions prove reluctant to apply its provisions. It is a law that benefits from a special statute, giving it priority over general laws, which in theory further increases its effectiveness. The general perception of whistleblowers present in Romania is slowly changing. Before the appearance of the Whistleblowers' Protection Act, the general opinion was that they were traitors and informants. Now, through the efforts made in promoting this law, the situation is improving, albeit slowly. While there are more and more people who have a good opinion of whistleblowers and even go as far as actively supporting them, it will be a while longer before the common mentality is completely changed. In the previous years, several institutions developed internal regulations on whistleblowing, including internal disclosure procedures used to adequately protect employees who report wrongdoing. However, the practice is not yet widespread.

Transparent and accountable enforcement of whistleblower law

There is no transparent and accountable enforcement, as institutions do not make public reports on whistleblowing, and applied measures and reporting channels for employees to report sensitive information to auditors or regulators without fear of being exposed are rarely available. Moreover, there is no independent agency to investigate whistleblowers' disclosures and complaints and to oversee their protection. As a result, most of the public institutions in Romania report having no whistleblowing cases.¹⁵⁷

¹⁵⁵ Transparency International Romania assessment of the implementation of the Whistleblower Protection Act, https://www.transparency.org.ro/politici_si_studii/studii/avertizarea_de_integritate_europa/RomaniaCountryReport.pdf. Interviews conducted for this report confirm the finding

¹⁵⁶ The monitoring reports on the implementation of the National Anticorruption Strategy 2016-2020, published by the Ministry of Justice at: http://sna.just.ro/Rapoarte+de+monitorizare ¹⁵⁷ Ibid.

Whistleblowing reporting channels

Whistleblowing disclosure can be made confidentially, but not anonymously (the whistleblower needs to disclose their name, but can request confidentiality). Whistleblowing can be made, alternatively or cumulatively, via internal or external channels, to:

- the hierarchical superior of the person having breached the legal provisions,
- the manager of the public authority, of the public institution or budgetary unit within which the person having breached the legal provisions is employed, or within which the illegal practice is notified, even if the author cannot be identified.
- the discipline committees or to other similar bodies within public authorities,
- the judicial bodies (Prosecutor's Office, Police),
- the bodies in charge with finding and researching conflicts of interest and incompatibilities (in Romania, such a body is the National Integrity Agency),
- the parliamentary commissions (more specifically the Chamber of Deputies' Research Commission for Abuse, Corruption and Petitions),
- the mass media,
- the professional, trade union or employers' organizations or
- non-governmental organizations.

Responsible institutions

Therefore, a large number of institutions and organisations can receive whistleblowers' disclosures and complaints, however, most of them are not dedicated to this and there is no special oversight by an independent whistleblower investigation/complaints authority or tribunal for both dealing with problems signalled by whistleblowers and protecting them.

Thematic area 6: Accounting, auditing and disclosure Accounting and auditing standards

Romanian accounting and auditing standards can be assessed at 75 out of 100, given that:

- companies are required to prepare regular financial statements that follow internationally recognised accounting standards, such as the International Financial Reporting Standards;
- standards prohibit inappropriate accounting acts, however fiscal optimization is widely practiced and the standards and accounting regulations do not guarantee the fair application of the fiscal legal framework for all taxpayers
- companies are required to maintain accurate accounting books and records available for inspection that properly and fairly document all financial transactions;
- companies are required to maintain effective internal control systems, supported whenever the size or risk level of the activity warrants it by an internal audit function;
- companies that are publicly traded, as well as large non-listed or privately held companies with substantial international business, are required to have accounts externally audited and published on an annual basis according to internationally recognised auditing standards, such as International Standards on Auditing (ISA).

Regulation of accounting

Romania has a special law on accounting, Law no. 82/1991, adopted only two years after the regime change in December 1989, but amended several times over time. The accounting law provides for the obligation of any legal person or self-employed person to:

- prepare regular financial statements¹⁵⁸ that follow internationally recognised accounting standards, such as the International Financial Reporting Standards¹⁵⁹
- maintain accurate accounting books and records available for inspection that properly and fairly document all financial transactions¹⁶⁰

Regulation of internal controls and audits

According to the rules in force, companies are required by law to have internal controls. The annual financial statements of certain entities are subject to audit, while other companies are only required to verify their information in the respective accounting documents with the help of the censors. The general requirements regarding the audit of the annual financial statements are included in Law no. 162/2017, the Order of the Ministry of Public Finances no. 1802/2014 and the Order of the Ministry of Finance no. 10/2019. According to these regulations, the annual financial statements of medium and large entities, as well as those of national companies, state-owned or majority-owned companies and autonomous regions are audited by one or more statutory auditors or audit firms, internal and external audits being needed. In addition, entities that, at the balance sheet date, exceed the limits of at least two of the following criteria are subject to audit:

total assets: 16,000,000 lei;

net turnover: 32,000,000 lei;

- average number of employees during the financial year: 50.

¹⁵⁸ Art. 5 and 6 of the accounting law no. 82/1991 with subsequent amendments.

¹⁵⁹ Art. 28 of the accounting law no. 82/1991 with subsequent amendments and Order of the Ministry of Finance no. 2844/2016

¹⁶⁰ Art. 5 and 6 of the accounting law no. 82/1991 with subsequent amendments.

For the entities listed above, the audit obligation applies when they exceed the respective limits in two consecutive financial years. They are also exempted from the obligation to audit the annual financial statements if the limits of two of the three mentioned criteria are not exceeded in two consecutive financial years.¹⁶¹

International standards

International Standards on Auditing are applicable according to the law to all audits¹⁶², including the one for companies that are publicly traded, as well as large non-listed or privately held companies with substantial international business. As stated above, the International Financial Reporting Standards are applicable for accounting.

The existing legal framework prohibits inappropriate accounting acts as administrative offences sanctioned by fine. A special criminal offence regarding the accounting fraud was regulated until 2012. At the moment, inappropriate accounting can be a crime only if proved as intentional fraud or forgery.

Fiscal optimization is widely practiced and the standards and accounting regulations do not guarantee fair application of the fiscal legal framework for all taxpayers. In this context, the lack of criminal liability for the accountants is a weakness of the system.

Enforcement of accounting and auditing standards

Romanian enforcement of accounting and auditing standards can be assessed at 50 out of 100, given that:

- the law enforcement agencies in charge of verifying non-adherence to accounting and auditing standards are the National Agency for Fiscal Administration and the Authority for Public Oversight of the Statutory Audit Activity (ASPAAS), and active enforcement is ensured.
- the country's institutional oversight system contributes partly to the effective enforcement of accounting and auditing standards;
- effective, proportionate and dissuasive civil and administrative penalties for failure to keep or for omissions and falsification of accounting books, records and accounts with a view to conceal corruption are applied. Criminal sanctions are no longer applicable since 2012;
- enforcement activities are not reported specifically to the public, but only as part of the quarterly reports.

Active enforcement and institutional oversight system

The public agency in charge of verifying non-adherence to accounting and auditing standards is the National Agency for Fiscal Administration (NAFA) and it shows active enforcement of these standards, according to the business representatives interviewed for this report. Moreover, specifically for audits, the Authority for Public Oversight of the Statutory Audit Activity (ASPAAS) is in charge of the oversight of auditors and their work.

However, the entire oversight system lacks consistency. NAFA carries out inspections to large taxpayers regularly and to high risk companies for tax avoidance, such as companies in the hospitality industry. But, if the risk is not tax avoidance, but rather corruption, the inspections of the National Agency for Fiscal Administration are not regular. 163

¹⁶¹ Order of the Ministry of Finance no. 1802/2014 and Order of the Ministry of Finance no. 10/2019.

¹⁶² Art. 32-34 of Law no. 126/2017 on statutory audit.

¹⁶³ ANAF, "Evaluation study project "Improving Integrity in the National Agency for Fiscal Administration through Institutional Cooperation and Capacity Building" – funded by the Norway Grants", https://static.anaf.ro/static/10/GranturiNorvegiene/studiu_evaluare.htm

On the other hand, the Body of Expert and Licensed Accountants of Romania (CECAR)¹⁶⁴ and the Chamber of Financial Auditors of Romania (CFAR)¹⁶⁵ are not oversight agencies, but professional associations. They promote standards, and can apply professional sanctions to accountants and auditors, but they do not have a strong public power. As a result, the most important sanction for non-adherence to accounting and auditing standards is debarring of the respective professional accountant or auditor of the firm, for a period of time. They can still perform some of the accounting and auditing activities, but they are not entitled to sign the most important documents if debarred by the professional associations.

Liabilities and sanctions

Concerning the criminal liability of accountants and auditors, the crime of fraudulent accounting was repealed in 2012. Administrative sanctions are applied by the professional associations directly to accountants and auditors and by the National Agency for Fiscal Administration to companies. These can further claim the civil liability of the guilty accountant for the irregularities identified by the National Agency for Fiscal Administration in the accounting.

Sanctions reported publicly

The National Agency for Fiscal Administration publishes quarterly reports; however, no special report is published on enforcement activities.

Professional service providers

Romanian professional service providers on accounting and auditing can be assessed at 75 out of 100, given that:

- professional service providers of accounting and financial audits (including trust and company service providers) are subject to formal licensing;
- professional service providers perform their services autonomously, according to their standards, ensuring independence from government agencies and companies, according to laws and professional regulations;
- there are professional oversight bodies which can exercise technical oversight and impose sanctions for poor performance and unethical behaviour;
- however, in practice, performance audit, and other forms of audit excepting the financial one, are a lot less regulated.
 Moreover, irregularities (most often discovered in the field of European Funds in the last 5 years in Romania) show that oversight bodies and existing professional standards are not always effective.

Licensing of professional services

Professional service providers for accounting and auditing, including natural and legal persons of any kind (including trusts) are subject to formal licensing by the respective professional bodies: Body of Expert and Licensed Accountants of Romania (CECAR) and the Chamber of Financial Auditors of Romania (CFAR)¹⁶⁶.

According to the respective law, the auditors perform their services autonomously, ensuring independence from government agencies and companies. The same provisions are not underlined by the law on accounting, but the

¹⁶⁴ http://ceccar.org/en/?page_id=82

¹⁶⁵ https://new.cafr.ro/en/misiune/

¹⁶⁶ https://new.cafr.ro/en/misiune/

autonomy of the accountants is provided by the code of ethics of the Body of Expert and Licensed Accountants of Romania.¹⁶⁷

Professional bodies ensuring autonomy and oversight

Established in 1921, the Body of Expert and Licensed Accountants of Romania is the representative body of the accountancy profession in Romania. The Body supports and promotes high quality professional practices through special concern for the competence, aptitudes and ethics of those involved in the profession. Due to its fundamental commandments, CECCAR provides quality assurance of the services supplied by its members, guarantees initial education and continuous development of professional accountants, oversees the knowledge and application of ethics and the ethical conduct of professional accountants. Through the activities it carries out, the Body encourages professional accountants to observe the moral values required for this profession, monitors that Romanian professional accountants, via the services they provide, always meet the market requirements, the business environment requirements and the public interest. International cooperation has been the key of the successes achieved by CECCAR. Its activity is based upon the application of the International Federation of Accountant (IFAC) standards, the directives and recommendations of the European Commission and the directions established by the manager of the accountancy profession at the European Union level, Accountancy Europe (former FEE).

The Romanian Financial Auditors Chamber's mission is to build the identity and the public recognition of the financial audit profession in Romania, having as a main objective the sustainable development of the profession and its strengthening, in accordance with the Auditing Standards and with the Code of Ethics, by fully assimilating the International Standards on Auditing and the Code of Ethics issued by the International Federation of Accountants (IFAC), that will allow the Romanian financial auditors to provide high quality services, for the public interest, in general, and for the business community, in particular.¹⁶⁹

In practice, performance audit and other forms of audit, excepting the financial one, are a lot less regulated.

Moreover, irregularities (most often discovered in the field of European Funds in the last 5 years in Romania) show that oversight bodies and existing professional standards are not always effective. 170

¹⁶⁷ Code of Ethics of the Body of Expert and Licensed Accountants of Romania, http://ceccar.org/en/wp-content/uploads/2012/03/NATIONAL-CODE-OF-ETHICS-EN-aprilie-2012.pdf

¹⁶⁸ http://ceccar.org/en/?page_id=82

¹⁶⁹ https://new.cafr.ro/en/misiune/

¹⁷⁰ https://op.europa.eu/webpub/eca/special-reports/fraud-in-cohesion-6-2019/en/index.html

Beneficial ownership

Romanian beneficial ownership provisions can be assessed at 50 out of 100, given that:

- public registers showing beneficial ownerships of companies are not fully freely available and in machine-readable formats. Registers on beneficial ownerships are under construction based on the legal provisions from June 2019. The law provides for publicly available information, under the restriction of the General Data Protection Regulation, which may represent a restriction. On the other hand, the law does not provide for machine-readable formats, although responsible institutions (the Trade Register and the Ministry of Justice) have a good record in providing such data.
- the register regulated by the law includes the full name, the month and year of birth, the nationality and the country of residence, as well as a description of how the ownership or control is exercised (such as the percentage of shares held);
- trustees are required to collect information on the beneficiaries and settlors of the trusts they administer, to make such information accessible to tax and law enforcement authorities and to report suspicious activities;
- nominees directors or shareholders are disclosed on record, including the name of the beneficial owner behind the nominee:
- wilful misrepresentation of beneficial ownership information and failure to disclose nominees directors or shareholders provide grounds for administrative penalties, fines and, if no corrections are made, these are grounds for the dissolution of the company. There are no criminal penalties regulated for misrepresentation of beneficial ownership.

Registers of beneficial ownership

Within the meaning of the law on money laundering, Law no. 129/2019, transposing European Directives in the field of money laundering¹⁷¹, the "beneficial owner of a company" means any natural person who ultimately owns or controls the company and/or the natural person on whose behalf a transaction, operation or activity is performed. The law also offers some benchmarks to help identify who owns or controls a company.¹⁷²

The Register of beneficial owners has been introduced at the level of the Trade Register in 2019. The law provides for publicly available information, under the restriction of the General Data Protection Regulation, which may represent a restriction. On the other hand, the law does not provide for machine-readable formats, although responsible institutions (the Trade Register and the Ministry of Justice) have a good record in providing such data.

For the creation of such a register containing the information necessary to identify the beneficial owners of the companies subject to registration in the Trade Register, Law no. 129/2019 provided for transitional provisions and set deadlines for the authorities to create the necessary administrative framework, but also for the companies to comply with the new obligations imposed. Thus, the companies registered after its entry into force (with the exception of the autonomous administrations and national companies), will be required, both upon registration and subsequently (annually or whenever necessary), to submit through their legal representative the declaration regarding the beneficial

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¹⁷¹ The law for preventing and combating money laundering and terrorist financing, as well as for amending and supplementing normative acts.

¹⁷² Definition at art. 4 of Law no. 129/2019. In the case of the companies regulated by Law 31/1990 (the "Companies Law") the beneficial owner is the one who ultimately owns or controls a legal entity through direct or indirect ownership of a number of shares or voting rights that is sufficiently large to ensure control or through an ownership interest in that legal entity or through control by other means. This criterion is considered to be fulfilled in case of holding at least 25% of the shares plus one share or an ownership interest of more than 25% in the legal entity.

owner. For the companies already registered, the law established a term of 12 months as of the date of its entry into force in July 2019 for the legal obligations imposed to be fulfilled. This deadline was extended due to lockdown generated by the COVID-19 pandemic, and the new deadline is November 1st 2020.

The Law on money laundering provides that central registries containing adequate, accurate and up-to-date information on the beneficial owners shall be set up, within 120 days of the entry into force of the Law, for associations and foundations (at the Ministry of Justice) and trusts (at the National Agency for Fiscal Administration).

Companies listed on stock exchange markets are required to declare the information on beneficial owners under a separate procedure. 173

The law stipulates that access to the Register of beneficial owners will be in accordance with the rules on the protection of personal data, which requires the Trade Register Office to take appropriate measures both to store the respective data in a safe and confidential manner and to ensure that the recipients of the information provided will take minimum measures to protect the data obtained and that they will not use it for purposes other than those stated. Currently, there are no mechanisms that could control such situations, but a clarification of the matter would be useful, perhaps by introducing clear and specific obligations for the recipients of the information, all the more so as the public authorities fall within the scope of the General Data Protection Regulation and must fully comply with its requirements.

Content of the beneficial ownership register

Law no. 129/2019 expressly stipulates the details that the interested persons will find out about the beneficial owner, namely: the name, the month and the year of birth, the nationality and the country of residence, as well as details on the beneficial ownership.

Information on beneficiaries of trusts

According to Law no. 129/2019, art. 4 para (2) and art. 19, trustees are required to collect information on the beneficiaries and settlors of the trusts they administer, to make such information accessible to tax and law enforcement authorities and to report suspicious activities.

Nominees directors or shareholders

The law regulating commercial legal persons, the law on the Trade Register, the law on NGOs and the law on social dialogue regulating trade unions and business associations, as well as the specific laws on professional associations ¹⁷⁴ regulate the disclosure of the nominees directors or shareholders. Most provisions related to the disclosure of beneficial owners are, however, concentrated in the law on money laundering already quoted.

Effective sanctions

Breach of this legal provisions on the disclosure of beneficial ownership is punishable by fines of up to RON 10,000 (approx. EUR 2,200), and if the legal representative does not submit the affidavit within 30 days of the date the fine is

¹⁷³ Law no. 297/2004 on stock exchange, with subsequent amendments.

¹⁷⁴ See law no. 31/1990 on commercial legal persons, with subsequent amendments, Law no. 26/1990 on the Trade Register, with subsequent amendments, Government Ordinance no. 26/2000 on associations and foundations, with subsequent amendments, Law no. 62/2011 on social dialogue for the regulation of trade unions and employers/business associations, with subsequent amendments

applied, the Trade Register may order the dissolution of the company. On the other hand, there are no criminal penalties regulated for misrepresentation of beneficial ownership.

Thematic area 7: Prohibiting undue influence Laws on political contributions

Romanian laws on political contributions can be assessed at 75 out of 100, given that:

- there is a transparent mechanism to determine direct public funding for electoral campaigns, however the system
 encourages dependency of the parties from companies loaning them money for the campaigns and encourage
 private loans to party members that afterwards become donations for their campaigns;
- the use of State resources in favour of or against political parties and individual candidates is prohibited;
- there is a ban on anonymous contributions, but some contributions can remain confidential (undeclared) up to a certain limit;
- financial and in-kind contributions, as well as loans to political parties and individual candidates, must be reported;
- there are limits on corporate donations to political parties and individual political candidates.

Direct public funding for electoral campaigns

According to the Romanian law on funding of electoral campaigns and the activity of political parties, Law no. 334/2006 with subsequent amendments, electoral campaigns are fully funded by the state budget, based on a mechanism of reimbursement of expenses reported by the parties.

Besides funding of the electoral campaigns, in Romania, political parties receive monthly subsidies from the state budget according to the number of votes they receive in the parliamentary elections combined with the ones obtained at the local elections. The law stipulates that funds may be spent for purposes related to party management, advertising, travel, consulting, penalties etc. (the full list of eligible expenses is included in the law). There are no specific legal provisions on the restitution or retention of the amount of unpaid subsidy at the end of the financial year. The payment of subsidies can be suspended for several reasons, including not disclosing information, incurring unforeseen costs or not presenting documents when requested by the Permanent Electoral Authority. The regulations on quotas allocated to the parties from the state budget were amended in 2018 and allocated quotas increased. According to art. 18 of the law, "the amount allocated annually to political parties from the state budget is at least 0.01% and not more than 0.04% of the gross domestic product. For political parties that promote women on the electoral lists, on eligible positions, the allocated sum from the state budget will be doubled, proportionally with the number of mandates obtained by female candidates in the elections." The 2018 amendments led to a significant increase in the amounts allocated to parties, up to a total of approximately € 37 million. According to an assessment of the Expert Forum NGO, the "subsidies allocated in 2018 have increased more than 20 times over the last decade, well above the inflation rate or the GDP growth." ¹⁷⁵

¹⁷⁵ https://expertforum.ro/en/political-subsidies/

Prohibition to use other State resources

The use of State resources, beyond the legal provision in Law no. 334/2006, in favour of or against political parties and individual candidates is prohibited by the Administrative Code and other administrative legislation. Moreover, there is a ban on corporate donations, national or international, to candidates and electoral campaigns.¹⁷⁶

Loans to political parties

Since May 2019, political parties can use subsidies and donations received over the years to fund their electoral campaigns and the expenses are afterwards reimbursed. If these funds are not sufficient, parties can use two sources of financing:

- donations from their own members or their own revenues (for example from rents), that are usually, in practice, a small fraction of the funding needed and used
- loans from private companies or natural persons that are repaid after the reimbursement of the electoral campaign expenditures by the Permanent Electoral Authority.

Therefore, the mechanism encourages dependency of the parties on companies loaning them money for the campaigns and encourages private loans to party members that afterwards become donations for their campaigns.¹⁷⁷

Confidential contributions, other bans and limits

Parties are allowed to receive confidential contributions and donations, meaning they must be aware of the identity of the contributor (in this respect anonymous contributions are not allowed), but the contributor can remain confidential and undeclared if the donation is under 10 minimum wages (about EUR 415 in 2019) and if the total amount of confidential contribution is up to 0.006% of the total public funding for the party.

International contribution (form foreign legal or natural persons), in money or in-kind, is not allowed for electoral campaigns or outside this context, for the day-to-day functioning of a party.

Individual contributions (from a single person) are limited, and they cannot be used for funding electoral campaigns, but only the day-to-day functioning of political parties.

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¹⁷⁶ According to art. 33 of Law no. 334/2006: "(1) It is forbidden to finance in any way the electoral campaign of a party, of an alliance or of an independent candidate by a public authority, public institution, autonomous direction, national company, company governed by Law no. 31/1990, republished, with subsequent modifications and completions, or credit institution, to which the state or administrative-territorial units are majority shareholders, or by companies regulated by Law no. 31/1990, republished, with the subsequent amendments and completions, which carry out activities financed from public funds. The prohibition applies to companies governed by Law no. 31/1990, republished, with the subsequent amendments and completions, which, 12 months before the beginning of the electoral campaign, carried out activities financed from public funds. (2) It is forbidden to finance in any way the election campaign of a political party, a political alliance, an electoral alliance, an organization of citizens belonging to national minorities and an independent candidate by trade unions, religious cults, associations or foundations of Romanian nationality or of a nationality other than Romanian"

¹⁷⁷ In September 2019 the European Parliament rejected the Romanian proposal for the European Commissioner on grounds of potential conflicts of interest. One of the main reasons for this was two loans worth nearly €1 million that the nominee commissioner did not declare in her original financial declaration scrutinized by MEPs. The European Parliament committee in particular queried a donation of 800,000 Romanian lei (almost €170,000) she made to her Social Democratic Party through a loan from a "natural person operating professionally in the area of tourism." The MEPs said it's not clear how "this outstanding loan is to be paid back in an open and transparent manner," according to a letter sent to Parliament by President David Sassoli last week. (https://www.politico.eu/article/romania-and-hungary-european-commission-picks-rovana-plumb-laszlo-trocsanyi-rejected-for-second-time/)

All contributions to political parties and electoral campaigns, including loans, must be reported to the Permanent Electoral Authority. 178

Enforcement and public disclosure on political contributions

Romanian enforcement and public disclosure of political contributions can be assessed at 75 out of 100, given that:

- political finance information is monitored by the Permanent Electoral Authority and the Romanian Court of Accounts, both being independent institutions according to the law;
- political parties and individual candidates report itemised contributions and expenditures both during and outside electoral campaign periods;
- citizens can access the financial information of all political parties and individual candidates, but the access is not always easy;
- the results of investigations or audits by authorities are published.

Monitoring of political parties' finances

The Permanent Electoral Authority monitors political finance information. According to Law no. 334/2006 on financing the activity of political parties and electoral campaigns, with subsequent amendments, political parties and individual candidates report itemised contributions and expenditures both during and outside electoral campaign periods.

The Permanent Electoral Authority is responsible for:

- monitoring funding,
- ensuring transfers of funds provided to parties by law, from the state budget,
- checking the electoral expenditures reports and reimbursing electoral expenditures
- controlling political parties on their financial management according to the provisions of Law no. 334/2006.

Moreover, the Romanian Court of Accounts is in charge of checking the financial management of political parties, as they are public legal persons according to the law.

Reports on political parties' finances and public access to this information

Citizens can access on the website of the Permanent Electoral Authority information on the money transferred or reimbursed by the Authority to political parties 179. However, the financial reports of the political parties are only accessible to the public on request. A recent ruling of a Romanian court of law shows that political parties must answer to requests on their expenditures according to the law on access to public information, Law no. 544/2001. 180

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¹⁷⁸ More details are available in Law no. 334/2006 with subsequent amendments and assessed by The International Institute for Democracy and Electoral Assistance (International IDEA): https://www.idea.int/data-tools/country-view/252/55

¹⁷⁹ https://finantarepartide.ro/

¹⁸⁰ In May 2019, with final ruling in November 2019, Romanian courts forced the Social Democratic Party to communicate to a journalist the funding sources and the budget for an event organised by the party in 2018. See: https://www.romaniajournal.ro/politics/bucharest-court-rules-that-psd-is-compelled-to-release-information-on-the-money-spent-on-white-shirts-rally/ (in English), https://www.digi24.ro/stiri/actualitate/psd-e-obligat-sa-publice-sursele-de-finantare-ale-mitingului-impotriva-abuzurilor-din-piata-victoriei-1215814 (in Romanian)

Investigations or audits of party financing

The results of the controls and investigations of the Permanent Electoral Authority and the Romanian Court of Accounts are public documents. The Permanent Electoral Authority publishes these results ex officio¹⁸¹, while most reports of the Romanian Court of Accounts are available to the public upon request.

Laws on lobbying

Romanian regulation on lobbying is assessed at 25 out of 100, given the lack of any compulsory regulation on lobbying. On the other hand the existing regulation on decision-making transparency contributes to the stakeholders' participation to the law making process.

There are no provisions related to lobbying in Romania. However, Romania is close to adopting a lobbying regulation based on the Austrian model, with a draft bill already approved by the Senate in April 2019¹⁸². The law will need approval by the Chamber of Deputies and the President's subsequent promulgation to enter into force. But many commentators think that the line between lobbying and influence peddling must still be clarified both in the draft bill and in practice when dealing with lobbying activities, even before their regulation.

On the other hand, in Romania the transparency of public administration and citizens' participation to the decision-making process are regulated by Law no. 52/2003 on the transparency in the process of decision-making of public administration and Law no. 544/2001 on free access to public information. Law no. 52/2003 establishes minimum procedural rules applicable to ensure decisional transparency within local and central public administration authorities, elected or appointed (Art 1). Moreover, it also applies to other public institutions that use public financial resources (Art 4). The law concerns the relations established between these authorities and the citizens as well as their legally established associations (Art 1(2)). Since the law establishes only the minimum requirements, each of these authorities can adopt rules which require even greater transparency.

Its purpose is threefold: 1. to increase the responsibility of public administration towards the citizen, as a beneficiary of the administrative decision; 2. to engage the active participation of citizens in making administrative decisions and in the process of drafting legislation and 3. to make the administration more transparent (Art 1(2)).

The two main avenues for citizens to participate in the decision-making process are organizing citizen-authority debates and taking part to public meetings of the decision makers. Paralleling the elaboration/adoption distinction, the law effectively differentiates between two different types of public gatherings: 1. public debates, dedicated to the interaction of citizens with specifically designated people from the public authority (initiators, experts) and 2. Meetings (usually of the local / county councils) in which the decision making body of the public authority deliberates and citizens can intervene (Art 7-10). While the latter are part of the adoption process, the former are to be organized only at the written request of those interested in expressing opinions. Both in the original and in the revised version of the law, the minutes of the meeting must be published after their conclusion.

¹⁸¹ http://www.roaep.ro/finantare/controlul-finantarii/

¹⁸² http://www.cdep.ro/pls/proiecte/upl_pck.proiect?idp=11970

Enforcement and public disclosure on lobbying

Given that lobbying is not regulated in Romania, it is not possible to assess the enforcement and public disclosure on lobbying. For methodological coherence, the indicator will receive a score of 0 out of 100.

A non-mandatory "transparency interest register" 183, based on the model of the European transparency register 184, was promoted by the government in 2016, but it is only actually used by a very small number of decision makers.

Undue influence by the private sector that can be identified as the criminal offence of influence peddling is regulated under the Criminal Code at art. 291 (influence peddling) and 292 (influence buying). All findings presented above in this report concerning the enforcement and capacity to enforce legal provisions on bribery of public officials are applicable in the case of the regulation and prosecution of influence peddling.

Laws on other conflicts of interest

Romanian laws on other conflicts of interest can be assessed at 50 out of 100, given that:

- public officials and all civil servants need to publicly and regularly declare their assets and interests, including
 financial investments, gifts, benefits and hospitality received from private sector entities and any income from
 positions held in the private sector. However, there are some shortcomings related to elements in the declarations
 that are not disclosed according to the law (e.g.: beneficial ownership, unpaid positions, disguised assets owned
 in practice, but not on paper)
- "cooling-off" periods are only regulated post-public employment for short periods of time (1 year for civil servants involved in public procurement, 3 years for civil servants involved in monitoring and control of private companies).
 Persons involved in the management of European funds have to observe a 5 years "cooling-off" period before employment in a company or NGO benefiting from European funding.

Asset and interest disclosure

Public officials and all civil servants in Romania have to disclose their assets and interests every year. Declarations are to be checked by the National Integrity Agency, but they are also public ex officio. Each public institution needs to upload these declarations. Asset declarations include:

- real estate and any valuable object in their property (cars, art, jewellery etc.);
- any taxable income in the previous year and from this information the National Integrity Agency, in charge of the administrative control of conflicts of interest, or any interested person, can deduce all paid positions in the private sector held by the public official or the civil servant;
- financial investments in companies;
- loans to and from companies or other natural persons;
- gifts, benefits and hospitality with a value over EUR 500, received from private sector entities. Moreover, according to Law no. 251/2004, public officials (including both elected officials and professional public servants) are not allowed to keep gifts received in their official position if their value is over EUR 200. Therefore, the declaration obligations cover as well gifts, benefits and hospitality received in any private context during the period they hold a public office.

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¹⁸³ http://ruti.gov.ro/

¹⁸⁴ https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/transparency/transparency-register_en

Interest declarations include:

- shareholder interests in private companies;
- membership positions in professional organisations or trade unions;
- management positions in private companies or NGOs;
- leadership positions in political parties;
- contracts signed by the declarant, their spouse, parents or children as natural persons or as representatives of a company with any public institution.

Declarations of assets and interests would not include:

- real estate or valuable goods in the possession of the public official or the civil servant, that are not legally in their property. This means officials do not have to declare assets they own (to which they are the beneficial owner) but that are legally held by other persons;
- unpaid positions in the private sector that are not at the managerial level do not need to be disclosed, even though the public official can develop non-financial interests or indirect financial interests for friends and family members;
- positions of beneficial ownership, where these positions do not coincide with shareholders or management positions.

Although they do not cover all situations, the fact that declarations of assets and interests are filled in by all public officials (including both elected officials and professional public servants) and that they are publicly available to any citizen, journalist, NGO etc. makes the disclosure policy in Romania relatively strong. However, the number of declarations overwhelms the capacity of the National Integrity Agency to check them.

Revolving door situations and "cooling-off" periods

On the other hand, "cooling-off" periods are under-regulated. There is no "cooling-off" period regulated for corporate executives becoming senior public officials or holding governmental positions, therefore there is no pre-employment regulation of potential conflicts of interest.

Regarding post-public employment "cooling-off" periods only 3 very specific situations are regulated:

- a 1 year "cooling-off" period imposed on public officials and public servants involved in awarding a public procurement contract who move to the companies selected in the procurement process;¹⁸⁵
- a 3 year "cooling-off" period imposed only on public servants (not on other types of public officials) who move to private companies they monitored, controlled or audited;¹⁸⁶
- a 5 year "cooling-off" period imposed only on persons involved in the appraisal of project proposals for European funds who move to work for a company or an NGO benefiting from the awarded European funding.¹⁸⁷

¹⁸⁵ Law no. 98/2016 on public procurement, with subsequent amendments, art. 61.

¹⁸⁶ Law no 161/2003 on some measure for public office transparency, with subsequent amendments, art 94, para (3).

¹⁸⁷ Emergency Ordinance no. 66/2011 on the prevention, detection and sanctioning of irregularities in obtaining and using European funds and / or national public funds they're associated with, with subsequent amendments, art. 13.

Enforcement and public disclosure of other conflicts of interest

Romanian enforcement and public disclosure of other conflicts of interest can be assessed at 25 out of 100, given that:

- compliance rate on filling in and submitting declarations of assets and interests in time is relatively high. However, some items are regularly omitted, which limits the effective monitoring of conflicts of interest
- conflicts of interest are monitored by an independent oversight authority. However, the National Integrity Agency
 has a limited capacity to monitor all conflicts of interest and in practice some elements do not appear on declarations,
 making monitoring even more difficult
- the very few existing "cooling-off" post-public employment periods are very rarely or not at all monitored

Monitoring of conflicts of interest

By law, conflicts of interest are monitored by a specialized administrative agency: the National Integrity Agency (NIA). The mandate of the institution is broad and its responsibilities have been assessed by the European Commission (through the CVM) as appropriate for the control of conflicts of interests¹⁸⁸. However, there are about 300,000 public officials who fill in asset and private interest declarations every year¹⁸⁹ and NIA does not have the capacity to check all declarations.

Compliance with regulation regarding asset and interest disclosure and conflicts of interest

Over time, the compliance rate for filling in and submitting declarations of assets and interests in time and the institutional performance of NIA increased¹⁹⁰. However, **its capacity is limited in terms of human, material and financial resources available**.¹⁹¹ Compensating for the lack of capacity of NIA, all declarations are publicly available and any person can notify NIA about any suspicion on a possible situation of conflicts of interest.¹⁹²

Some limits exist in the implementation of the legal provisions on asset and interest disclosures. Although benefits and hospitality need to be declared, as they are not permanent additions to the assets of a person, these items are very often neglected when declarations are made. The most important limitation of this policy is that it is not mandatory for the support personnel (in secretarial and logistical support positions) in public institutions to disclose assets and interests. In practice, in some institutions, key and influential positions that should be held by civil servants have been organized as support functions and their holders therefore do not disclose their assets and interests. 193

¹⁸⁸ See results of the European Commission monitoring under the Cooperation and Verification Mechanism for Romania at https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania_en

Report on 10 years of activity of the National Integrity Agency, available at: https://www.integritate.eu/Home/Brosura-A.N.I.aspx

 ¹⁹⁰ Ibidem.
 191 Result of a research conducted by the National Integrity Agency in partnership with Transparency International Romania

¹⁹¹ Result of a research conducted by the National Integrity Agency in partnership with Transparency International Romania.192 Art. 12, Law no. 176/2010 with subsequent amendments.

¹⁹³ Result of a research conducted by the National Integrity Agency in partnership with Transparency International Romania (unpublished until drafting this report).

Enforcement of revolving door regulations and "cooling-off" periods

"Cooling-off" post-public employment periods that are regulated are very rarely or not at all monitored, as most of the Romanian institutions have no strategy to monitor the revolving door.¹⁹⁴

Thematic area 8: Public procurement Operating environment

Romanian operating environment for public procurement can be assessed at 75 out of 100, given that:

- information regarding the key aspects of the public procurement process is made publicly available according to laws on both procurement and transparency, but not in widely used formats;
- administrative processes limit the scope of discretionary decision-making due to the detailed legal provisions on procurement procedures;
- contracts between the contracting agency and its contractors, suppliers and service providers do not require explicitly the parties to comply with strict anti-corruption policies, although, due to the strong legal provisions against corruption, these elements are implicit in the contract;
- public contracts above a certain threshold are subject to competitive bidding;
- "Integrity Pacts" are piloted in Romania in the cooperation between three civil society organisations and four contracting large authorities (ministries and national authorities).

Transparency of procurement processes

Romania transposed the new EU Directives in the field of public procurement in 2016, four laws being adopted by the Parliament in May 2016: Law no. 98/2016 on public procurement, Law no. 99/2016 on sectorial procurement, Law no. 100/2016 on concession contracts for works and services and Law no. 101/2016 on remedies (appeals processes). However, the laws have been amended several times since that time.

The laws on public procurements, concessions and remedies, in conjunction with Law no. 544/2001 on the access to public interest information, ensure robust transparency of key aspects of the public procurement process (planning, bidding, evaluation, implementation and monitoring). The information of interest for the procurement process and needed by bidders in order to prepare their tenders is published for all interested bidders on the electronic public procurement platform. The entire "public procurement folder", including all documents regarding the procurement, can be requested and is made public only after contract awarding, based on Law no. 544/2001 on the access to public interest information. On the other hand, although access to open data is progressing in Romania, there are no provisions regarding the availability of the procurement information in widely used formats.

Procedures limiting the scope of discretionary decision-making in public procurement

An electronic platform for public procurement is used in Romania, designed to provide transparent publication of tenders and the names of winners and closing prices, as well as to host all communications related to the procedure in a way

¹⁹⁴ The monitoring reports on the implementation of the National Anticorruption Strategy 2016-2020, published by the Ministry of Justice at: http://sna.just.ro/Rapoarte+de+monitorizare.

that can be monitored and controlled¹⁹⁵. Furthermore, a new system called PREVENT was established in late 2016 allowing the imposition of ex-ante checks on public procurement processes.¹⁹⁶

The administrative procedures described by the law on public procurement and also by the law on sectorial procurement and concession contracts are effective in limiting the scope of discretionary decision-making. Detailed procedures and steps are described by the law.¹⁹⁷

As presented above in this report, the Criminal Code includes a criminal offence related to bid rigging in public procurement, including collusive tenders. It is a crime to "remove, by constraint or corruption, a participant from a public auction". The agreement between the participants to distort the award price is also a criminal offence¹⁹⁸.

Anti-corruption clauses or programmes

While, the National Agency for Public Procurement proposed a template contract including integrity and anti-corruption elements, there is no explicit requirement for the parties to comply with strict anti-corruption policies.

Competitive bidding

In line with the EU Directives in the field of public procurement in 2016, public contracts above a certain threshold are subject of competitive bidding. Moreover, contracts under the threshold value provided by the EU Directive 24/2014 on public procurement are required to apply a competitive bidding procedure if their value is about EUR 30,000 for supplies and services, and approximately EUR 100,000 for works. For direct procurement, under this second threshold, competitive bidding is not required, but contracting authorities must compare offers.

Integrity Pacts

Concerning the Integrity Pacts, they are not required by law, but they are integrated in the National Anti-corruption Strategy 2016-2020¹⁹⁹, and pilot projects testing the integrity pacts are under implementation until 2021.²⁰⁰ However, there are some limits to the Integrity Pacts piloted in Romania: they are not mandatory for bidders and they do not cover subcontractors. The access to the tender evaluation phase of the independent monitor in the Integrity Pact is also limited, being allowed only after contract awarding. The independent monitor has direct access to procurement and tender preparation and contract execution, but it can only assess ex-post the tender evaluation process.²⁰¹

¹⁹⁵ https://sicap-prod.e-licitatie.ro/pub

¹⁹⁶ Law no. 184/2016.

¹⁹⁷ Government Decision no. 395/2016 with subsequent amendments.

¹⁹⁸ Art. 246 of the Criminal Code.

¹⁹⁹ National Anticorruption Strategy 2016-2020, action 3 under specific objective 3.6 - Increased integrity, reduction of vulnerabilities and risks of corruption in the field of public procurement

²⁰⁰ For further information see the websites of integrity pacts implemented in Romania between 2016 and 2021: https://www.pactedeintegritate.ro/and https://www.romaniacurata.ro/contracte-curate/
²⁰¹ Ibid.

Integrity of contracting authorities

Integrity of contracting authorities in Romania can be assessed at 50 out of 100, given that:

- the contracting authorities and their employees commit to a strict anti-corruption policy as part of a code of conduct as provided by the administrative law. In some cases, there are special codes of conduct and explicit declarations of the authorities adhering to the principles of the National Anti-corruption Strategy
- the contract authorities and their employees receive training on the anti-corruption policy, but it is not necessarily regular and nowadays it is mostly driven by the available European funds;
- internal control and auditing bodies function independently at the level of the contracting authorities:
- asset and interest disclosure and the control of conflicts of interest are provided by law and mechanisms for implementation are created. However, they are not effective in preventing all conflicts of interest;
- whistleblowers protection in the public sector is provided by law, but safe, anonymous mechanisms for whistleblowers are rare
- dissuasive, proportionate sanctions are in place for contracting authorities and their employees upon ascertaining of corruption;
- there are no specific provisions on the remuneration of procurement positions, and in practice such remuneration is very heterogeneous.

Anti-corruption policy and codes of conduct

According to the Romanian legislation in the field of public administration, contracting authorities and their employees commit to a strict anti-corruption policy as part of a code of conduct included in the administrative law.²⁰² In addition, some of the contracting authorities have developed their own code of conduct for their employees and have committed to a strict anti-corruption policy through an official declaration on joining and supporting the principles of the National Anti-corruption Strategy 2016-2020.

Training on integrity

Regular training of employees in the public sector is regulated. However, in practice, it is not provided in all institutions. However, good results in ensuring training on anti-corruption and integrity of employees working within contracting authorities are generated by the European funded projects under the Operational Programme Administrative Capacity which allocated funds for the implementation of the National Anti-corruption Strategy 2016-2020 at local and central level. A total of 42 institutions are beneficiaries of funding for this purpose, and projects often include training as well as other interventions, such as the development of specific anti-corruption procedures.

Internal control and auditing bodies

According to the public funding legal framework²⁰³, public institutions are required to establish internal control and auditing structures and functions that are responsible to check all contracts and expenditures, including public procurements. These structures and functions are regulated as autonomous at the level of public institutions /

²⁰² Since 2019 the Administrative Code includes the Romanian Civil Servants' Code of Conduct (former Law no. 7/2004)

²⁰³ Law no. 672/2002 on internal public audit, with subsequent amendments, Law no. 500/2002 on public finances, with subsequent amendments.

contracting authorities. However, as is the case for the entire Romanian public administration, they are under the risk of undue political influence.²⁰⁴

Asset and interest disclosure and the control of conflicts of interest

All public officials, civil servants and employees of the contracting authorities (even if they are not civil servants) are required to sign an impartiality declaration. Moreover, all public officials and civil servants are required to submit and make public declarations of assets and interests, in an attempt to ensure the transparency of interests. In addition, for the control of conflicts of interest, a dedicated law instituted a verification process for all procurement procedures. All procedures are checked against the data at the National Agency of Integrity, the Trade Register and persons' identity records in order to ensure there are no close family relationships between the representatives of the contracting authority and the persons involved in the evaluation of tenders on the one hand and the bidders' representatives on the other hand.²⁰⁵ However, the definition of the conflicts of interest only covers very close family relationships, many other real conflicts of interest, between friends or more distant family members remains non-regulated.

Romania's public procurement system is perceived as vulnerable to irregularities: companies perceive bribes and irregular payments to be widely exchanged in return for obtaining public contracts (over half of businesses report they encountered unclear evaluation criteria and conflicts of interest in public procurement). Therefore, licenses and procurement officials are strongly perceived to show favouritism when deciding on contracts according to the Business Anti-Corruption Portal.²⁰⁶

Proportionate sanctions

If procurement integrity is breached, the contracting authorities can be fined by the Romanian Court of Accounts, and further the authority can hold the guilty civil servant accountable administratively (applying disciplinary sanctions up to firing) and civilly (requesting compensation).²⁰⁷ In very serious cases that can be proven as crimes, the criminal sanctions for procurement rigging are provided by the Criminal Code ranging from 1 to 5 years in prison.

Whistleblowers protection

Last but not least, as presented in detail under the thematic area dedicated to whistleblowers, there are few safe and anonymous mechanisms for whistleblowers provided by contracting authorities.

²⁰⁴ European Commission, 2018, Public administration characteristics and performance in EU28, report on Romania available at: https://op.europa.eu/en/publication-detail/-/publication/90311e18-95fe-11e8-8bc1-01aa75ed71a1/language-en ²⁰⁵ Law no. 184/2016.

²⁰⁶ European Union Anti-Corruption Report, 2014, cited by https://www.ganintegrity.com/portal/country-profiles/romania/

²⁰⁷ Administrative Code (Emergency Government Ordinance no. 53/2019), Part VI, Title II, Chapter VIII, art. 492-497 and Part VII on administrative accountability, Title II, art. 568-571.

Remuneration of the personnel in charge of public procurement

There are no special provisions concerning the adequate remuneration of the personnel in charge of public procurement. In practice, remuneration of the personnel in charge of public procurement is very heterogeneous among public authorities, despite the existence of a law on the remuneration of employees in the public sector.²⁰⁸

External safeguards

Romanian external safeguards for public procurement integrity can be assessed at 50 out of 100, given that:

- the external control and auditing body the Romanian Court of Accounts functions independently and their reports are publicly available;
- robust, independent and effective appeals processes are in place for aggrieved bidders;
- complaints mechanisms for reporting allegations of corruption are in place, but they are not specific to public procurements;
- a voluntary disclosure programme is provided that allows companies to report on corruption in return for mitigation sanctions, but this is limited and only applies to bribery situations;
- the participation of civil society organisations as independent monitors is being trialled in the period 2016-2021, but at the moment independent monitors are not allowed to participate to the tender evaluation phase in any way.

External oversight

According to the law, the appointments of the Accounts Councillors of the Romanian Court of Accounts are made by the Parliament. Thus, there are high risks of politicisation of the Court's management and activities. The reports of the Court are debated by the Parliament with a huge delay. Where there is confidential information that was audited and to which the reports refer, these documents are not made public. As the reports are public only when final, and an investigation of the Romanian Court of Accounts can take years until being finalised, sometimes the information is not made public in a timely manner. On the positive side, the legislative framework to ensure the accountability and the integrity of the Romanian Court of Accounts provides a special code of conduct for the external auditors forming the staff of the Romanian Court of Accounts. This is a positive element to ensure the integrity in practice.²⁰⁹

Concerning the effectiveness of the Romanian Court of Accounts in fulfilling its role there are no data on the implementation of the Court's recommendations, although it is a criminal offence for the civil servant not to put in practice the recommendations of the Romanian Court of Accounts.²¹⁰

Control can also be exercised by Control Bodies at ministerial level and by the Prime Minister Control Body, but their functioning is less independent, as they are more or less dependent on the ministers and on the Prime Minister. Moreover, their reports are not public and their control does not generate direct legal effects, but they are rather used to refer irregularities to other authorities, including the Romanian Court of Accounts and the Prosecution Office.

²⁰⁸ Law no. 153/2017 regarding the remuneration of staff paid from public funds allows local institutions from public administration, including local contracting authorities to establish staff salaries according to their decision based on local autonomy (with a very large margin between the lowest and the highest possible salary)

²⁰⁹ Special regulations for the staff of the Court of Accounts are published at http://www.curteadeconturi.ro/Regulamente.aspx.

²¹⁰ Art. 64 of Law no. 94/1992 on the Court of Accounts, with subsequent amendments.

Appeals processes

Concerning the appeal procedures in public procurement, Law no. 101/2016 with subsequent amendments provides a simple and rapid appeal procedure²¹¹. This mechanism is complemented by the possibility to appeal to the courts. However, since 2018 access to the National Council for Dispute Resolution²¹² has been limited as a financial guarantee is needed in order to file an appeal.

Complaint mechanisms and disclosure programmes

Complaint mechanisms for reporting allegations of corruption are not specific to procurement processes and they are based on criminal complaints to the prosecutor or the police. The only available mitigation incentive for companies to report on corruption is the one presented under thematic area 1 referring to reporting bribe payments. If blackmailed to pay a bribe, a person is not considered a perpetrator of the crime and denunciations of acts of bribery are encouraged by the fact that it is not punished if, and only if, denounced by the person offering the bribe before the responsible authorities have any knowledge about the crime. This provision in art. 290 of the Criminal Code is meant to motivate denunciation of corrupt public officials. However, the perception of civil society and business representatives interviewed is that it can have the opposite effect of ensuring impunity for perpetrators of bribery crimes, since, as soon as they feel or know they are in a real danger of being caught, they immediately report their crime and afterwards they continue the same behaviour. No special voluntary disclosure programmes are provided that allow companies to report on corruption in return for mitigation sanctions.

Independent monitoring

As presented above, the participation of civil society organisations as independent monitors throughout all stages of the procurement process is under trial, using the Integrity Pacts methodology and tools. Some legal limits have already been reached, as the independent monitors are not allowed to participate during the tender evaluation phase in any way, being limited to monitoring the tender preparation and implementation phases.

²¹¹ The appeal procedure is done by the National Council for Dispute Resolution, an administrative body with jurisdiction power in public procurement.

²¹² The National Council for Dispute Resolution deals strictly with procurement related disputes.

Regulations for the private sector

Romanian regulations for the private sector in the context of public procurement processes can be assessed at 75 out of 100, given that:

- companies are permitted to tender without a transparent ownership structure and without a code of conduct. However, previous relevant convictions make bidders ineligible for procurement contracts. If convicted, a bidder can prove its integrity by developing and applying a code of conduct and an anti-corruption programme;
- sanctions against companies and their representatives are effective, proportionate and dissuasive and include monetary and non-monetary penalties (for example, debarment);
- settlement mechanisms and procedures are available;
- no incentives are offered for companies with effective anti-corruption programmes in place.

Limited access to public procurement for bidders

Law no. 98/2016 on public procurement provides reasons for excluding the candidate/bidder from a public procurement procedure. Thus, according to art. 164, the contracting authority excludes from the award procedure any economic operator that has been convicted by a final Court judgement for one of the following criminal offences: the establishment of an organized criminal group, corruption, crimes against the financial interests of the EU, terrorism, money laundering, human traffic or fraud.²¹³ The contracting authority will determine the reason for exclusion based on the information and documents submitted by the bidder or if the contracting authority becomes "otherwise aware" of such reason. As provided by Directive 2014/24 the contracting authority shall exclude an economic operator if "the person convicted by final judgment is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein."

Article 165 of Law no. 98/2016²¹⁴ provides that the contracting authority excludes from the award procedure any economic operator that breached its obligations regarding the payment of taxes, debts or contributions to the consolidated general budget. The exclusion criteria operate in two situations: when there is a judicial or an administration decision that established the breach of obligations or when the contracting authority can prove the breach of obligations by any appropriate means.²¹⁵ The contracting authority can make exceptions to these exclusion criteria on grounds of national interest, public health or environment protection and it has to make exceptions if debts to the consolidated general budget are under 4.000 lei (about €870) and under 5% of the total due taxes and contributions of the economic operator.

Following the provisions of Directive 2014/24, article 167 of Law no. 98/2016²¹⁶ provides that the contracting authority excludes any economic operator that:

²¹³ See also the art. 177 of Law 99/2016 on sectorial procurement; art. 79 Law no. 100/2016 on concession contracts for works and services

²¹⁴ See also art. 178 of Law 99/2016 on sectorial procurement; art.80 of Law 100/2016 on concessions of works and of services

²¹⁵ However, according to art. 167 of Law 98/2016, the economic operator is not excluded if it pays the taxes, debts or contributions (or such debts are extinguished in any other legal way, e.g. by compensation with other payments to the state budget). At administrative level, the contracting authority can make exception from exclusion in case of debts to the public budget, on grounds of national interest, public health or environment protection and it has to make exceptions if debts to the consolidated general budget are under 4.000 lei (about €870) and under 5% of the total due taxes and contributions of the economic operator.

²¹⁶ See also the art. 180 of Law 99/2016 on sectorial procurement; art.81 of Law 100/2016 on concession contracts for works and services.

- a. has breached its obligation of indicating in the tender that they have taken into account the relevant obligations in the environmental, social and labour relations fields. This can be proved by any appropriate means by the contracting authority;
- b. is under a process of insolvency or under winding-up proceedings, under judicial supervision of activities or in the situation of cessation of business:
- c. has proven a serious professional misconduct. This can be proved by any appropriate means by the contracting authority;
- d. has concluded agreements with other economic operators aimed at distorting competition within or in connection to the procedure of public procurement;
- e. is in a situation of conflicts of interest within or in connection with the procedure in question and this situation cannot be effectively remedied by other less stringent measures;
- f. has participated in a previous preparation of the award procedure, leading to a distortion of competition;
- g. has proven deficient performance in a previous public contract implementation;
- h. has been proven guilty of false statements regarding the content of the information submitted upon the request
 of the contracting authority for the purpose of verifying the absence of grounds for exclusion or the fulfilment of
 the qualification and selection criteria, has failed to submit such information or is unable to provide the required
 supporting documents;
- i. attempted to illegally influence the decision-making process of the contracting authority, to obtain confidential information which could result in unjustified advantages in the award procedure, or has provided, through negligence, erroneous information which may have a significant influence on the decisions of the contracting authority regarding the exclusion from the award procedure of that economic operator, its selection or the award of the public procurement.

Sanctions for bidders

According to article 169 of Law 98/2016²¹⁷ an economic operator can be excluded from the award procedure at any time, for reasons of action or inaction related to the motives for exclusion committed before or during the procedure. Therefore, existing contracts (already awarded) can be terminated if corruption comes to light after the contract has been signed.

Article 171 of Law 98/2016²¹⁸ provides that the economic operator can provide evidence of having taken measures sufficient to demonstrate their credibility. Therefore, the economic operator cannot be excluded if the contracting authority considers the evidence sufficient and relevant. According to article 168 of Law 98/2016 (art.181 of Law 99/2016 / art.82 of Law 100/2016), the contracting authority has to do so, if evidence, such as certificates, criminal records or other equivalent documents issued by the competent authorities of that country, is provided.

While the sanction of exclusion from public procurement procedures for a period of 1 to 3 years provided under the Criminal Codes applies to legal persons for any participation to the procurement procedures, the exclusion reasons provided by the Law no. 98/2016 apply to each and every procedure, depending on the Contracting Authority's thoroughness in verifying all the exclusion grounds for each of the bidders.

²¹⁷ See also art.182 of Law 99/2016 on sectorial procurement, art.83 of Law 100/2016 on works concessions and service concessions

²¹⁸ See also art. 184 of Law 99/2016 on sectorial procurement; art.84 of Law 100/2016 on works concessions and service concessions

Opaque ownership structure and lack of an integrity programme are not reasons for bidders' exclusion, as they are not part of the limited causes for exclusion provided under Law no. 98/2016 on public procurement.

The criminal liability of corporate entities is a relatively new concept in Romanian criminal law. It was only in 2006 (Law 278 of 4th July) that the Criminal Code of 1968 (the "Criminal Code of 1968") was modified to include provisions in this respect. The Romanian legislature adopted a new criminal code in 2019 (the "Criminal Code") to replace the existing one from 1968, keeping the notion and the main features of the criminal liability of legal persons from the regulation in 2006. The criminal liability of legal persons, according to the Criminal Code applies to all legal entities, except for the state, public authorities and public institutions which carry out activities in the public domain. Generally, corporate entities may be held criminally liable for offences committed in relation to their statutory scope of activity, in their interest or on their behalf. The rules for distinguishing between holding liable only the corporate entity's directors and officers and holding liable both the directors/officers and the corporation itself are not currently clearly regulated. However, a corporate entity may be held criminally liable if, through its individual or collective management body, it was aware of, it encouraged or consented to the commission of an offence by an individual in relation to the corporate entity's statutory scope of activity. If the offence is one of negligence, the corporate entity is only liable if the commission of the offence is due to the latter's lack of supervision or control. Holding a corporate entity criminally liable does not exclude its civil or administrative liability. Besides the fine, courts may apply one or several of the auxiliary penalties, although their application is mandatory if provided by the law for specific offences. Auxiliary penalties include the dissolution of the corporate entity, suspension of the corporate entity's activity (or of one of its activities) for a period ranging from 3 months to 3 years, closing down some of the corporate entities' working units for a period ranging from 3 months to 3 years. debarment from public procurement for a period ranging from 3 months to 3 years and/or publicising the conviction.

In 2016, Romania transposed Directive EU 2014/24, making all the exclusion grounds in article 57²¹⁹ mandatory for the contracting authorities, imposing therefore a more restrictive regime of exclusion/debarment from public procurement than most other EU Member States.

²¹⁹ Art. 57 of Directive EU 2014/24 concerns exclusion grounds. Para. (1) provides that: "Contracting authorities shall exclude an economic operator from participation in a procurement procedure where they have established, by verifying in accordance with Articles 59, 60 and 61, or are otherwise aware that that economic operator has been the subject of a conviction by final judgment for one of the following reasons:

⁽a) participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA:

⁽b) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and Article 2(1) of Council Framework Decision 2003/568/JHA as well as corruption as defined in the national law of the contracting authority or the economic operator:

⁽c) fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests;

⁽d) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA respectively, or inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;

⁽e) money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council;

⁽f) child labour and other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council.

The obligation to exclude an economic operator shall also apply where the person convicted by final judgment is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein."

Settlement mechanisms

Art. 171 of Law no. 98/2016 provides that any economic operator that may find themselves in any of the exclusion situations presented above²²⁰ can provide evidence to show that they took sufficient measures to demonstrate their credibility. The given measures include payment of all damages, active cooperation with prosecution and investigation institutions, reorganisation or any other internal/management decision that could eliminate risks for perpetuation of criminal offences or professional misconduct, including dismissal of persons guilty of these offences in the first place.

Anti-corruption incentives

As confirmed by both the desk based legal research and interviews, there are no legal provisions for incentives offered to companies with effective anti-corruption programmes in place (for example, as an eligibility criterion in procurement conditions).

Thematic area 9: Taxes and customs

Operating environment

Romanian operating environment concerning taxes and customs can be assessed at 50 out of 100, given that:

- processes to determine, pay and collect are provided by the law, and are therefore standardised. However, they are not simple and transparent due to the complexity and lack of clarity in the fiscal and customs legal provisions;
- technology is used in the administration of taxes and customs in order to limit the officials' discretionary powers on the one hand, and the interactions between taxpayers and tax and customs officials on the other hand. However, direct face-to-face interactions are still very often in customs and tax inspections, and the risk of corruption remains high in these cases;
- information on taxes and customs fees collected and their sources, as well as on tax deals is public. However, it is not easily accessible.

Taxation processes and the use of technology

Romanian fiscal and customs legal provisions, in the Fiscal Code, Customs Code and the Fiscal Procedure Code include provisions on the processes to determine, pay and collect taxes, provisions on the number of taxes or customs, the regulation of taxes among national and local authorities, the level of tax and customs rates and the number of, and criteria for, tax exemptions. Moreover, interactions between taxpayers and tax and customs officials are increasingly limited, based on electronic filing and payments, used almost exclusively for legal persons in 2019.²²¹ In order to limit tax evasion, in 2020 the Ministry of Finances introduced long expected measures connecting digitally the cash registers to the National Agency of Fiscal Administration databased.

Therefore, tax officials' discretionary powers are limited. Less progress has been achieved in limiting interactions between payers and customs officials, and limiting these officials' discretionary powers is challenging due to the direct inspection of goods. Moreover, interactions between companies and tax officials are still very common, as tax officials

²²⁰ Art. 164 (on criminal convictions as grounds for exclusions) and Art. 167 (administrative and professional conduct reasons as grounds for exclusion) of the procurement law

²²¹ See provisions in the Fiscal Code, Customs Code and the Fiscal Procedure Code, as well as the presentation of projects for digitalisation: https://static.anaf.ro/static/10/Anaf/Relatii_R/Prezentare_RAMP_ianuarie2016.pdf

conduct on-site inspection of businesses where the officials' discretionary powers are still very high in practice due to lack of concrete provisions limiting them.²²²

One of the major vulnerabilities to corruption concerning taxes and customs is the unstable, cumbersome and sometimes inconsistent tax legislation (including provisions that are unclear or seemingly contradictory). The vulnerability has been identified both in surveys and interviews, by all target groups consulted in 2016 for an evaluation of corruption risks commissioned by the National Agency of Fiscal Administration. These stakeholders included citizens, businesses and tax and customs officers. Analysis of legislation also confirmed this perception.²²³

Although the legislation is harmonized with the European law, there are ambiguities in the customs legislation that are noticed not only by taxpayers but also by customs officers. For example, it is not clear what types of goods coming from other countries can be considered humanitarian aid.²²⁴

Some interviewees emphasized that the recovery of VAT and customs operations are more vulnerable to corruption than others. The vulnerability caused by the often amended tax legislation, generated by its complexity and lack of clarity may generate corruption when taxpayers try to avoid a fine for errors they made without intent, due to misinterpretation or insufficient knowledge of the law, by paying a bribe (the "small gift").²²⁵

The same evaluation shows tax and customs officials prefer to interact with taxpayers at the counter and consider it one of the most effective forms of information and communication. However, observations show that there is an increased vulnerability to petty corruption in over the counter communication with taxpayers, because this form of communication does not allow continuous and systematic monitoring. Also, taxpayers and the researchers who conducted the observation realized the lack of organization of the over-the-counter interaction (the need to move to several counters or desks, malfunction of the electronic queue) and the rude attitude of employees in the territorial tax offices towards taxpayers.²²⁶

Access to information on the collection of taxes and customs fees

The National Agency for Fiscal Administration (NAFA) publishes information on taxes and customs fees collected and their sources in their reports²²⁷, but the information is not easily accessible and clear to citizens and business persons that are not knowledgeable concerning the details of NAFA activities. Tax deals made with national and multinational companies, including advance tax rulings are strictly regulated, as Romania is in line with European principles on competition, state aid and other forms of public support to companies. However, tax deals are not published ex-officio. The information can be accessed upon request based on the provisions of Law no. 544/2001 on access to public information.

²²² ANAF, "Evaluation study project "Improving Integrity in the National Agency for Fiscal Administration through Institutional Cooperation and Capacity Building" – funded by the Norway Grants", https://static.anaf.ro/static/10/GranturiNorvegiene/studiu_evaluare.htm

²²³ Ibid.

²²⁴ Ibid. ²²⁵ Ibid.

²²⁶ Ibid.

²²⁷ NAFA reports are published online at: https://www.anaf.ro/anaf/internet/ANAF/despre_anaf/Strategii ANAF/Rapoarte studii/

Integrity of tax administration authorities

The integrity of tax administration authorities in Romania can be assessed at 50 out of 100, given that:

- the tax and customs administration and its employees are subject to strict regulations on corruption.
- dissuasive and proportionate sanctions are in place for tax and customs administration employees as well as private sector staff where corruption is uncovered;
- procedures and training against corruption are provided by the tax and customs administration, but their impact and quality are still sub-optimal;
- internal control and auditing bodies function independently, effectively and efficiently within the tax and customs administration, generating a fairly low level of perceived corruption. However, the risks of corruption are not fully mitigated, as several corruption scandals that have affected NAFA indicate.
- mechanisms for whistleblowers' protection in the public sector are provided, but they are not fully effective because of cultural and trust limits, rather than regulations and technical safety issues;
- the remuneration for tax and customs official positions is above average in Romania, but it is still not considered well adapted to the competences and responsibilities required for these positions.

Anti-corruption commitment

National Agency for Fiscal Administration (NAFA) officials, including both tax and customs officials commit to anticorruption policy as part of general regulations for the public office. The institution uses two codes of conduct: one for officials working in support services for taxpayers and one for officials working in fiscal inspection. Only the latter includes explicit anti-corruption provisions. However, as presented above in this report, Romania has a fairly strong legal framework prohibiting corrupt behaviour of public officials, even in the absence of such provisions in specific codes of conducts.

Effective sanctions

Corruption offences in the field of tax and customs are sanctioned in the same way as in other sectors. Therefore, findings underlined in this report under thematic areas 1 and 2 are valid for this section as well.

Internal control and training

A special department of NAFA is in charge with integrity and internal training sessions are organised, as well as internal controls and audits. However, the evaluation of corruption risks commissioned by the National Agency for Fiscal Administration conducted in 2016 shows that between half and a third of the cases tax and customs officers processed could not be traced through written records. Moreover, interviews with NAFA officers reveal that they do not identify in the existing procedures criteria that underpin the formation of work teams and the allocation of tasks to these work teams. For example, the procedures do not contain provisions to ensure that a person is not overloaded with tasks. Also, beyond the tax officer's own statement, in the procedure provisions have not been identified to ensure that an official is not assigned the documentary check or inspection of a taxpayer they may be in conflict of interest with. In addition, the absence of clear criteria in the procedures for designating the inspection teams, may result in teams of untrained or work-overloaded inspectors.²²⁸

²²⁸ ANAF, "Evaluation study project "Improving Integrity in the National Agency for Fiscal Administration through Institutional Cooperation and Capacity Building" – funded by the Norway Grants", https://static.anaf.ro/static/10/GranturiNorvegiene/studiu_evaluare.htm

The survey conducted in 2016 showed that NAFA is not perceived as an institution with a very high level of corruption. Most of businesses surveyed, after being checked by NAFA, (81%) believe that NAFA inspectors complied with all regulations in force during such controls, and 7% think they respected the majority of them, and only 4 out of 438 respondents (about 1%) said they had to offer "gifts" (goods, money, etc.) to the officers with whom they interacted to settle the claims for which they addressed NAFA. However, the research shows there is, still, a perception among some taxpayers that control can be "tamed", and a procedure can be facilitated by paying a bribe, and also the impression that any control or inspection will be completed with payment of a fine or of a bribe. This perception provides incentives for corruption and puts pressure on the tax and customs officers.²²⁹ Moreover, corruption risks are not fully mitigated at high level, as several high corruption scandals have affected NAFA.²³⁰

Whistleblowers protection

In this respect, anonymous mechanisms for whistleblowers are provided for public officials within NAFA, based on a procedure developed by the Integrity Directorate of the Agency. However, these mechanisms are not used very much, for the same reasons that whistleblowing channels are not effective in other institutions as well.

Human resources available and remuneration for tax and customs officials

The same evaluation shows that 21% of individuals and 14% of the legal entities are dissatisfied with the time it takes NAFA to resolve inquiries from taxpayers. The interviews and observations confirm that there are problems in the institution with responding promptly to taxpayers, showing that staff numbers are insufficient for some of the most important tasks in relation to the taxpayers. Moreover, in 2016 tax and customs officers' remuneration was not correlated with their skills and responsibilities and considered unattractive and with no capacity to motivate performance and integrity. However, regulations concerning salaries in the public sector in Romania changed in 2017 and 2018, increasing the level of remunerations for tax and customs officials. There is no available assessment on the impact of modified salaries on performance, but interviews underline it is still difficult for the tax and customs authorities to employ and retain the best qualified experts. This is, according to the same interviews, not only due to salaries, but also related to organisational culture and the lack of a good system to evaluate, motivate and reward professional performance.²³¹

²²⁹ Ibid.

²³⁰ Several directors and former presidents of NAFA have been convicted for corruption (including bribery and influence peddling). Among examples: the former NAFA president, Sorin Blejnar, sentenced in May 2019 for bribery and influence peddling (http://www.ziare.com/sorin-blejnar/dna/fostul-sef-al-anaf-sorin-blejnar-condamnat-definitiv-la-5-ani-de-inchisoare-pentru-coruptie-1560594).

²³¹ Several European Commission and European Council recommendations, including the ones under the European Semester in the period 2015-2019 underline this problem.

External safeguards

Romanian external safeguards for tax and revenue collection integrity can be assessed at 75 out of 100, given that:

- a single tax and customs identification number for companies is used for tracking each company,
- complaint mechanisms, internal (for fiscal public officials) and external (for companies), for reporting allegations of
 corruption are in place. However, they are not fully effective, as the anti-corruption hotline is not promoted very
 much by the tax and customs administration, and no incentives are provided to taxpayers for reporting;
- several institutions provide financial, administrative or judiciary control for the tax and customs administration: the Romanian Court of Accounts, the National Integrity Agency and prosecution offices and they have legal and practical guarantees of independence, as showed above in this report.

Single tax and customs identification number

A single tax and customs identification number is provided to companies when registering in Romania and this makes it straightforward to track tax history and tax obligations of companies.²³²

Complaint mechanisms

An anti-corruption hotline is available for taxpayers to report allegations of corruption. However, it is not very well advertised and promoted (e.g.: it is not promoted on the homepage of NAFA website, it is not at all present on the website of the Customs DG, but it is present on the specific pages of regional directorates for tax administration). However, there is no voluntary disclosure programme provided, allowing companies to report on corruption in return for the mitigation of sanctions.

Financial or administrative control

The main control and audit body for the tax and customs administration is the Romanian Court of Accounts, which is moderately effective²³³. Moreover, the activity of the tax and customs officials as well as the management of NAFA is subject to conflicts of interest monitored by the National Integrity Agency. Criminal investigations for corruption within NAFA are conducted by the National Anti-corruption Directorate and other prosecution offices. The assessment of the legal and practical independence guarantees for the National Integrity Agency and prosecution offices is presented above in this report.

²³² Provisions are part of both the Fiscal Code and the legislation on establishing a legal person: firms and NGOs.

²³³ See above: External safeguards to public procurement processes, where the performance of the Court of Accounts is presented.

Private sector assessment

Overall assessment

Unlike the public sector that has a relatively well-developed legal framework, in line with international practices and incentives, the business sector in Romania has not adopted international corporate integrity standards on a large scale. Initiatives to promote integrity are both rare and weak.

While, in general, multinational corporations import their anti-corruption policies and standards from their central company, domestic companies are even less interested in the issue. Although many entrepreneurs are speaking out against corruption, this is not reflected in their management strategies.

The Romanian economic environment is dominated by the lack of trust in others and in the Romanian state. But, due to the perception of corruption as being necessary for some contracts in Romania – because of corrupt public officials – corruption issues are not necessarily the most relevant for companies in their due diligence and partner monitoring processes and they are rarely a deal breaker.

Thematic area 10: Integrity management Provision of policies

The provision of corporate formal policies to counter corruption in Romania can be assessed at 50 out of 100, given that:

- only few companies establish clear, visible and accessible formal policies prohibiting corruption;
- when existent, these policies address the most prevalent risks of corruption, such as conflicts of interest, bribes, political contributions, charitable contributions and sponsorships, facilitation payments, gifts, hospitality and expenses, money laundering and collusion;
- in most cases, when existent, policies are visible to all parties within and outside the company;
- in general, adherence to policies is mandatory and applies to all levels, functions and areas of the company

Anti-corruption policies and their scope

The Ministry of Justice has a dedicated cooperation platform with business under the National Anti-corruption Strategy. The platform comprises 22 members (including 4 embassies, 3 chambers of commerce, the Foreign Investors Council, the Romanian Bank Association and 10 major companies) and meets twice a year since 2012. The platform discusses topics of common interest such as compliance systems, anti-bribery programs in companies, use of anti-corruption clauses in relationships with suppliers and distributors, public procurement procedures, codes of ethics, transparency of lobbying activities and open data. The discussions have prompted the adoption of preventive measures such as exante control of conflicts of interest in public procurement and opening of contracts as part of the Open Government commitments. Compliance officers from major Romanian companies have shared their expertise and best practices

with integrity officers working in public institutions, and have evaluated the anti-corruption mechanisms in various central and local administrations, line ministries and other public agencies.²³⁴

In 2013, the Centre for Legal Resources in Romania surveyed private and public companies on the topics of ethics and compliance. "A thousand largest companies by the number of employees and annual turnover were asked to fill in the online survey but only 52 companies responded, which the authors of the study interpret as a sign of "reduced interest and availability of the companies from Romania to participate in researches and consultations regarding legal ethics and compliance". Out of the respondents, 66% were companies with foreign capital. Out of the surveyed companies:

- 68% had an internal code or guide of ethics in business (or applied the internal code or guide of ethics in business established by the group of companies they were a part of), which was distinct from its internal regulation policy.
- 38% had an ethics and compliance department or a designated person that had the quality of an ethics and compliance officer
- 77% had procedures for prevention of bribery
- 75% had procedures for preventing conflicts of interest
- 36% had last year (2012) at least one ethics training for their employees or management
- 68% had mechanisms through which the employees can report anonymously an ethical, corruption or conflicts of interest incident

Each of the elements was considerably more common among the companies with foreign capital compared to companies with Romanian capital.²³⁵

Visibility of anti-corruption policies and their coverage

Only 11 Romanian companies are part of the <u>Global Compact Network Romania</u> launched in 2015, including 6 SMEs. These companies have clear, visible and accessible formal policies prohibiting corruption. They are not the only ones, but further research shows that integrity management is not formally regulated in many of the Romanian companies, although it can be an issue of concern for many entrepreneurs and business persons.

The largest Romanian companies have, however, formalised codes of ethics and anti-corruption policies addressing most prevalent risks of corruption, such as conflicts of interest, bribes, political contributions, charitable contributions and sponsorships, facilitation payments, gifts, hospitality and expenses, money laundering and collusion. These codes and anti-corruption policies apply generally to all levels, functions and areas of the company. However, few policies are visible to the public and partners outside the company.²³⁶

²³⁴ OECD, "Business Integrity in Eastern Europe and Central Asia", 2016.

²³⁵ Centre for Legal Resources (2013), Ethics and Compliance in the Romanian Business Sector, research report, Bucharest; https://issuu.com/crjromania/docs/ethics_and_compliance_in_the_romani, cited and quoted by OECD, "Business Integrity in Eastern Europe and Central Asia", 2016.

²³⁶ Centre for Integrity in Business of Transparency International Romania, several research publications in 2012-2014, https://www.transparency.org.ro/ro/tiropage/centrul-pentru-integritate-business.

On the other hand, interviews show that small companies do not have anti-corruption policies as they do not perceive them to be necessary. Anti-corruption management is more ad-hoc and not formalised in these cases. The same interviews show that small company's administrators/shareholders declare that, even if there is no written regulation in the prevention of corruption, there are so-called "unwritten" laws in companies to prevent corruption (e.g.: they take into account the risk of prosecution and convictions and refrain from illegal behaviour etc.).

Implementation of practices

The implementation of corporate policies to counter corruption in Romania can be assessed at 25 out of 100, given that:

- only few companies implement a programme that reflects their particular business risks, circumstances and culture
- where such a programme exists, the Chief Executive Officer or the owner of the company is responsible for ensuring that the programme is carried out consistently with clear lines of authority;
- when implementing anti-corruption programmes, training of managers and employees takes place but it is unclear how many of those programmes are based on a risk assessment and their impact on human resources management, internal communication and feedback mechanisms. It is unclear to what extent these programmes are implemented in synergy with other corporate programmes;
- 67% of the anti-corruption programmes studied for this report are mandatory for all employees;
- on the other hand, no information is made public in terms of implementation of the programmes, reviews, sanctions applied by companies within the framework of the programmes;
- concrete existing cases, where important figures in corporations are accused of or confess to corruption, show that these programmes are not fully implemented and companies do not always cooperate appropriately with relevant authorities in connection with corruption investigations and prosecutions.

Existence of anti-corruption implementation programme

Although most of the companies included in the surveys conducted by Transparency International Romania in 2011 and 2016 have a code of ethics and internal procedures to prevent bribery and conflicts of interest, they do not have mechanisms for implementing the procedures (mechanisms such as ethics training or compliance departments). The main mechanism for implementing internal procedures seems to be the anonymous referral of ethical incidents to an ethics/anti-corruption officer within the company. In 2016, 70% of the interviewed companies gave good grades to the compliance mechanisms, respectively to the practices of implementing ethical values in their companies and 60% assessed positively the system for reporting irregularities / integrity warning line.²³⁷ However, these figures are based of the self-evaluations of the companies and need to be assessed while putting all the other available data in perspective. Moreover, the companies replying to the survey are rather inclined to have already effective anti-corruption policies and programmes when starting to fill in the questionnaire and they are not a representative sample for Romanian companies overall.

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²³⁷ Ibid.

Person in charge of the anti-corruption implementation programme

According to interviews conducted for this reports, there are two approaches to ensure that the programme is carried out consistently with clear lines of authority: either the CEO assumes this responsibility or the anti-corruption policies include the nomination of a compliance officer. However, it is unclear how many of these anti-corruption corporate policies are based on risk assessments and influence human resource management, internal communication or feedback mechanisms.

Coverage of anti-corruption programmes and training

67% of the anti-corruption programmes studied for this report are mandatory for all employees. In this context, most interviewees underlined that the anti-corruption corporate programmes they know include training sessions for employees. But no information is available on sanctions implemented by the companies and the level of compliance.

Cooperation with anti-corruption authorities

According to interviews, if interested in a clean image, companies cooperate well with relevant authorities in connection with corruption investigations and prosecutions. However, although they take some degree of responsibility over the corruption allegations, large multinational corporations recognise their anti-corruption mechanisms are not always effective in preventing corruption in high risk countries. For example, in 2013, Microsoft was investigated by US regulators over similar claims in Romania, Italy and China.²³⁸

Whistleblowing

The implementation of corporate whistleblowing mechanisms in Romania can be assessed at 25 out of 100, given that:

- a whistleblowing reporting line is not present in over 50% of the large companies surveyed by Transparency International Romania²³⁹. However, this is not the case for SMEs which, in principle, do not have it at all;
- in these cases, where whistleblowing channels are available, employees alerting the management of abuses are protected from victimisation and retaliation.
- there is no information of the actual implementation of whistleblowing policies in companies, including if the information provided by reporting persons is handled promptly and through an orderly follow-up process and/or any further course of action undertaken is communicated to the reporting person. This information is not included in corporate reports.

Whistleblowing channels

According to the survey conducted by Transparency International Romania in 2011 and 2016, a whistleblowing reporting line is present in less than 50% of the large companies participating to the survey. Moreover, over 48% of the respondents declared their company had no plans to develop a whistleblowing channel in the near future.²⁴⁰

²³⁸ At the time of this investigation, Microsoft said: "In a company of our size, allegations of this nature will be made from time to time. It is also possible there will sometimes be individual employees or business partners who violate our policies and break the law. In a community of 98,000 people and 640,000 partners, **it isn't possible to say there will never be wrongdoing**." https://www.siliconrepublic.com/companies/microsoft-bribery-sec-hungary

²³⁹ Centre for Integrity in Business of Transparency International Romania, several research publications in 2012-2014, https://www.transparency.org.ro/ro/tiropage/centrul-pentru-integritate-business.
²⁴⁰ Ibid.

Whistleblowers protection

At declarative level, companies provide safe and accessible channels to report violations of the rules without the risk of retaliation. In principle, these are not whistleblowing channels, but regulated internal communication channels. In such cases, there are no written regulations in companies with a small number of employees, but directors argue that their employees are encouraged to announce and report suspicions of corruption.

When written rules are not present, there is no guarantee that the employees alerting the management of abuses are protected from victimisation or retaliation. There is equally no certainty that information provided by reporting persons will be handled promptly and through an orderly follow-up process, or that any further course of action undertaken is communicated to the reporting person.

The labour legal framework (the Labour Code) provides a minimum level of protection for the employees. However, they are rather legal remedies if retaliation and harassment occur after whistleblowing, but no effective preventive regulations are available at present. In this context, the new European Directive on whistleblowing is expected to make a significant difference.

Business partner management

In Romania, the implementation of corporate anti-corruption policies to business partners can be assessed at 25 out of 100, given that:

- companies with an anti-corruption programme implement it in all business entities over which they have effective control;
- companies undertake due diligence of business entities when entering into a relationship, including mergers, acquisitions and significant investments;
- companies perform reasonable and proportionate monitoring of their significant business relationships, including the right of inspection of accounting books and records in the case of very close and important business relationships;
- however, companies rarely use their influence to encourage an equivalent programme in business entities in which they have a significant investment or with which they have significant business relationships but no effective control, one of the reasons being related to the perception of the ubiquity of the phenomenon.

In order to assess this indicator, information was collected solely through key informant interviews.

Promotion of anti-corruption programmes to controlled entities

Regularly, those large companies which have an anti-corruption policy or programme implement it in all business entities over which they have effective control and they 'remember' anti-corruption values when investing in other entities.

Due diligence and monitoring of business partners

Companies undertake due diligence of business entities when entering into a relationship, including mergers, acquisitions and significant investments and they also perform reasonable and proportionate monitoring of their significant business relationships, including the right of inspection of books and records in the case of very close and important business relationships.

However, due to the widespread perception of corruption among the business community, especially to secure public contracts, corruption risks are not necessarily a priority for companies in their due diligence and partner monitoring processes and they are rarely a deal breaker. As shown in the assessment of bribery and corporate bribery provisions and practices, sanctions for corruption are much more often applied to public officials compared to companies. As a result, corruption risks are not yet enough of a deterrent for Romanian businesses.

On the other hand, small companies respond to corruption challenges on an 'ad-hoc basis', often without any prevention programme against corruption and without paying sufficient attention to the practices of business partners.

Thematic area 11: Auditing and assurance Provision of policies

The provision of corporate control and monitoring structures in Romanian companies can be assessed at 50 out of 100, given that:

- only large companies maintain an effective system of internal controls over their financial accounting and record-keeping practices and other business processes, establishing internal financial and organisational checks and balances. Most of these mechanisms are required by law.
- companies must maintain, available for inspection, books and records that properly and fairly document all financial transactions;
- only large companies have independent, sufficiently resourced internal audit structures in place. Small companies do not have to maintain these structures by law and they usually do not have such departments in their structures;
- only for large companies, the effectiveness of the internal audit function is assessed by an external review team, annually, as required by the law. As the law is considered comprehensive, there are very few companies conducting additional external checks:
- only, for large companies an Audit Committee (or equivalent body) assists in the oversight of the integrity of the company's financial statements, and its compliance with legal and other regulatory requirements, and the CEO and the CFO certify in a written statement to the Board of Directors or the Oversight Board that the financial statements present a true and fair view of the affairs of the company. Most of these elements are also mandatory by law;
- control mechanism are often absent from small and medium companies.

Effective internal controls and inspection of books

In 2017, the Romanian Statutory Audit Law no. 162/2017 made significant changes to statutory audits carried out in Romania, as a result of the EU Audit Reform legislation package being transposed into national legislation. The annual financial statements of medium and large entities are audited by one or more statutory auditors or audit firms. Entities that, at the balance sheet date, exceed the limits of at least two of the following criteria are subject to audit:

- total assets: 16,000,000 lei;net turnover: 32,000,000 lei;
- average number of employees during the financial year: 50.

All companies that have to conduct an external audit are also obliged to conduct internal audit. In 2017, the law introduced penalties of 50.000 to 100.000 lei for failure to carry out an internal audit by companies which are required to do so. It also reiterates the requirement that auditors who coordinate internal audits should be active financial auditors.

The 2017 law is particularly important for Romanian companies that up until then had organized internal audits at group level (i.e. outside Romania). Those group level audits also covered the Romanian entity as well as companies that outsourced their internal audits to a service provider outside Romania. As of 2017, these companies must now ensure that the internal auditors responsible for organizing and conducting the internal audit are active financial auditors registered in Romania, i.e. active members of the Romanian Chamber of Auditors (CFAR), authorized by the Authority for Public Oversight of the Statutory Audit Activity (ASPAAS).

The law is not applicable for banks and insurance companies, but their audit is mandatory according to the legal framework regulating their activities.

Resources for internal audits

Therefore, conducting professional internal audits is mandatory for large Romanian companies. But these large companies have the necessary resources for audits, which do not represent a substantial burden for these companies.

Interviewees for this report agree that tone is set at the top in Romanian companies. The same sources show internal audits can help prevent corruption in companies, and companies with a sincere intention to prevent corruption keep accurate books that properly and fairly document all financial transactions.²⁴¹

Responsibilities for books and audits

The CEO and the CFO in a company assume responsibility and certify in a written statement to the Board of Directors that the financial statements present a true and fair view of the affairs of the company.²⁴²

On the other hand, interviewees for this report agree small companies are not required to perform internal audits and in practice few do so.

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²⁴¹ Ionela-Corina Chersan, (2016), Internal audit practices and trends in Romania and worldwide, *Audit Financiar*, vol. XIV, no. 9(141)/2016, pp. 987-1002, DOI: 10.20869/AUDITF/2016/141/987,

²⁴² Information based on interviews conducted for the present report.

External audit

The external audit for Romanian companies financial reporting can be assessed at 50 out of 100, given that:

- for large companies, annual audit is conducted by an independent, competent and qualified auditor in order to provide external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the company in all respects. Small companies are not required to conduct audits by law and they usually do not do so in practice;
- when performing external audits, Romanian companies (large and medium) utilise licensed external auditors, as this is mandatory by law. The external auditors must be independent of company officers, board members and their families and not have any other substantive contracts with the audited company;
- there is some evidence, based on interviews, that, for most of the companies, the external audit service providers are rotated. No further information is available on how often this rotation happens;
- in general, companies don't report publicly on their external audits.

Competences of external auditors

External audit is conducted by large companies every year in accordance with the law²⁴³. Professional service providers for auditing, including natural and legal persons of any kind (including trusts) are subject to formal licensing by the Chamber of Financial Auditors of Romania (CFAR)²⁴⁴. Only licensed external auditors are contracted by companies when conducting audits.

International Standards on Auditing are applicable according to the law to all audits²⁴⁵, including for companies that are publicly traded, as well as large non-listed or privately held companies with substantial international business. This ensures that the auditors perform their services autonomously, ensuring independence from government agencies and companies. For this reason, auditors need to be independent of company officers, board members and their families and do not have any other substantive contracts with the audited company. This is largely respected in practice, as the Chamber of Financial Auditors of Romania and the Authority for Public Oversight of the Statutory Audit Activity verify these situations.

Rotation of auditors

On the other hand, it is unclear whether companies rotate auditors and how frequently. There are no general sources for this information, and interviews conducted for this report provided information based on different insulated examples. While this is considered a good practice by some companies, it is not necessary a generalised practice.

Publication of audit reports

Moreover, companies do not report publicly on their external audits, although this is considered a good practice by some companies.²⁴⁶

²⁴³ Law no. 162/2017

²⁴⁴ https://new.cafr.ro/en/misiune/

²⁴⁵ Art. 32-34 of the Law no. 126/2017 on statutory audit.

²⁴⁶ Information based on interviews conducted for the present report.

As in the case with regard to internal audits, small companies are not required to and typically do not conduct external audits.247

Independent assurance

The use voluntary independent assurance on the design, implementation and/or effectiveness of the anti-corruption programmes of Romanian companies can be assessed at 0 out of 100, given that usually companies do not undergo voluntary independent assurance on the design, implementation and/or effectiveness of their anti-corruption programmes. The only available information on this indicator has been provided by interviews with NAG members.

Typically, assurance is linked to risk assurance and it is usually undertaken based on ISO Standards. The International Standard on Assurance Engagements (ISAE 3000) is not widely used in Romania. In this context, through desk research and interviews for this report, we have not been able to identify any instances of voluntary independent assurance on the design, implementation and/or effectiveness of companies' anti-corruption programmes and related assurance opinions publicly disclosed by companies.

Thematic area 12: Transparency and disclosure

Disclosure of anti-corruption programmes

The disclosure of anti-corruption programmes by Romanian companies can be assessed at 25 out of 100, given that less than a third of the largest Romanian companies assessed based on the transparency in corporate reporting (TRAC) methodology²⁴⁸ disclose all relevant elements of their anti-corruption policies. In detail:

- 53% disclose their anti-corruption commitment, but only for 41% their leadership's support for anti-corruption is explicitly disclosed:
- 67% disclose that their code of conduct/anti-corruption policy explicitly applies to all employees; but only 42% apply anti-corruption policy to their agents and other intermediaries, as well as contractors, subcontractors and suppliers;
- 30% disclose that they have an anti-corruption training programme for employees and directors in place;
- 44% disclose that they have a policy defining appropriate/inappropriate gifts, hospitality and travel expenses;
- 38% disclose that there is a policy that explicitly forbids facilitation payments (but this can be partly explained by the fact that facilitation payments are considered bribes in Romania and any anti-bribery policy automatically includes prohibition of facilitation payments);
- 52% disclose that the company prohibits retaliation for reporting violations of the anti-corruption policy, but only 25% disclose that they have whistleblowing channels:
- 36% disclose that the company carries out regular monitoring of its anti-corruption programme;
- 17% disclose that the company has a policy on political contributions.

68 of the largest Romanian companies, composed of 26 local firms and 42 subsidiaries of international corporations, were assessed in 2016 and 2018, based on the methodology developed by Transparency International for Transparency

²⁴⁷ Ibid.

²⁴⁸ These assessments were conducted by Transparency International Romania as part of the activities of the Centre for Integrity in Business. It included 68 of the largest Romanian companies, composed of 26 local firms and 42 subsidiaries of international corporations, listed as the largest in the country after their annual turnout in 2016. They remained the most relevant companies on the Romanian market until 2019.

in Corporate Reporting (TRAC)²⁴⁹. Only 36 out of these 68 companies (53%) had a publicly stated commitment to anti-corruption. While 36 had publicly committed to comply with all relevant laws, including anti-corruption laws, only in 28 cases does the company leadership demonstrate support for anti-corruption through the establishment of an anti-corruption programme. For 12 additional companies the commitment does not explicitly include anti-corruption, but ethical behaviour.

For 41 companies (60%), the code of conduct or ethics is public, and for 39 (67%) of them, this code explicitly applies to all employees and directors and includes clear anti-corruption elements. Only 24 of the companies (38%) explicitly prohibit facilitation payments, but this can be partly explained by the fact that facilitation payments are considered bribes in Romania and any anti-bribery policy automatically includes prohibition of facilitation payments.

For 29 of the companies assessed (over 42%), the company's anti-corruption programme applies to non-controlled persons or entities that provide goods or services under contract (for example: contractors, subcontractors, suppliers), but only in 17 cases are all relevant stakeholders taken into account.

Only 19 companies (30%) have an anti-corruption training programme for employees and directors in place, and 11 additional companies have training programs with some anti-corruption elements in place.

Only 28 companies (44%) have a gifts, hospitality and travel expenses policy in place, and 4 additional companies have partial policies for these topics (gifts, hospitality and travel expenses). Only 11 (17%) companies have clear policies on political contributions, that either prohibit such contributions or at least require such contributions to be made public.

In the case of 33 companies (52%), the programme enables employees and others to raise concerns and report violations (of the programme) without risk of reprisal, but only 16 (25%) provide a channel through which employees can report suspected breaches of anti-corruption policies, in a confidential and/or anonymous fashion.

Only 23 companies (36%) have a monitoring process described by the anti-corruption policy, but only 15 of them have made public any kind of results of the monitoring process.

Disclosure on organisational structures

The disclosure on organisational structures of Romanian corporations can be assessed at 25 out of 100, given that a very small number of Romanian companies disclose the list of subsidiaries and their organisational structure.

In the case of the 42 subsidiaries part of international corporations, the organisational structures were not assessed during the TRAC research. For the Romanian companies in the list, a very small number disclose their list of subsidiaries.

However, the disclosure of the beneficial ownership has been regulated in 2019²⁵⁰ and is implemented starting with 2020.

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²⁴⁹ These assessments have been conducted by Transparency International Romania as part of the activities of the Centre for Integrity in Business. However, they have not been published until this moment. The assessments are based on the study of programmes and reports published by the companies on their websites and a questionnaire sent to companies.

²⁵⁰ See above the assessment on beneficial ownership.

Disclosure of key financial data on country-by-country basis

The disclosure of key financial data of companies in Romania can be assessed at 0 out of 100, given that companies disclose their financial data for operations in Romania, in the case of international companies, or overall for Romanian and abroad operations in the case of local companies. However, CSR community contributions are not disclosed. Moreover, companies do not disclose financial data country-by-country.

According to the law, key financial data submitted to Romanian fiscal authorities, including revenues/sales, capital expenditure, pre-tax income, the paid income tax are published by the Romanian fiscal authorities and are available to any interested person on the website of the Ministry of Finances.²⁵¹ However, companies do not disclose financial data country-by-country.

On the other hand, in 2016 and 2018, none of the assessed companies published their community contributions in Romania. They publish their annual reports, but the amount of the community contributions cannot be found.

Due to the very small number of Romanian companies present at international level, this indicator will not be taken into account in the score average of the private sector.

Additional disclosures

Additional disclosures on charitable contributions, sponsorships and lobbying activities of Romanian companies can be assessed at 0 out of 100, given that Romanian companies do not disclose their sponsorships and lobbying activities.

None of the companies assessed in 2016 and 2018 was found to publish the amount of their sponsorships. Moreover, although some include sponsorships in their annual report, it is not clear if they report on all the sponsorships.

As lobbying is not regulated in Romania, companies do not report on the lobbying activities.

Thematic area 13: Stakeholder engagement Stakeholder relations

The engagement of Romanian companies in multi-stakeholder initiatives against corruption can be assessed at 25 out of 100. While over half of the managers surveyed in TI-Romania surveys stated stakeholder satisfaction was their primary objective, there is very little evidence of stakeholders' engagement in corporate governance processes, with the exception of trade unions participation in corporate decisions affecting workers.

According to the research done by Transparency International Romania in 2013 and 2016, over half of the Romanian managers answering the questionnaire (55%) stated their primary objective to be stakeholders' satisfaction rather than just shareholders' profit. However, stakeholders are rarely involved in companies' sustainability and financial plans. For large companies, on the other hand, stakeholders are often involved in planning the Corporate Social Responsibility programmes.²⁵²

https://www.transparency.org.ro/ro/tiropage/centrul-pentru-integritate-business.

²⁵¹ http://www.mfinante.ro/agenticod.html?pagina=domenii.

²⁵² Center for Integrity in Business of Transparency International Romania, several research publications in 2012-2014,

As presented in the previous section, information on the activity of the companies is not fully and always made public. However, the main financial results are public by law. Moreover, based on the law of social dialogue, a dialogue between the company and its employees is mandatory but only for decisions that affect employees' existing rights directly.²⁵³ Employees and their representative bodies are able to freely communicate their concerns about illegal or unethical practices to the Board of Directors, as presented in the section on corporate whistleblowing, but as already underlined, although legal remedies exist against retaliation, there are very weak legal provisions and corporate policies to prevent harassment of whistleblower employees.²⁵⁴

Business-driven anti-corruption initiatives

The initiatives against corruption of Romanian companies can be assessed at 25 out of 100, given that cooperation between companies and other stakeholders rarely aims to strengthen anti-corruption measures. In most of the cases where anti-corruption initiatives regarding business have been identified, they have not been initiated or driven by the business sector.

According to interviews, anti-corruption is not a priority of companies in Romania, despite increasing awareness of corruption risks. Therefore, companies do not collaborate regularly with stakeholders from the public sector and/or civil society to strengthen anti-corruption efforts. Cooperation is limited, rare and undertaken by a small number of companies.²⁵⁵

The Ministry of Justice has a dedicated cooperation platform with business under the National Anti-corruption Strategy, including 22 members (e.g. 4 embassies, 3 chambers of commerce, the Foreign Investors Council, the Romanian Bank Association and 10 major companies). The platform meets twice a year since 2012 to discuss topics of common interest for the business community and the public administration. Topics discussed included compliance systems, anti-bribery programs in companies, use of anti-corruption clauses in relationships with suppliers and distributors, public procurement procedures, transparency of lobbying activities and open data. The OECD observed that these "discussions have prompted the adoption of preventive measures such as ex-ante control of conflicts of interest in the public procurement and opening of contracts as part of the Open Government commitments." ²⁵⁶

Members of the platform are also involved in the monitoring process of the implementation of the Anti-corruption Strategy, including through on-site evaluation visits in public institutions. Moreover, in the discussions of the platform or the monitoring visits, compliance officers from major Romanian companies have shared their expertise and best practices with integrity officers working in public institutions.²⁵⁷

On the other hand, there are very few instances where businesses have taken positive action following civil society organisation advocacy. In 2013 representatives of the SMEs, academia, civil society, big companies and health sector have signed Integrity Pacts for their respective sectors, thus demonstrating that a critical mass of integrity wardens has been reached and they are starting to work reverse the course of corruption. In the form promoted by the Centre for Integrity in Business, the integrity pact features an implementation mechanism – the Integrity Monitoring Commission. In case of failure to comply with the obligations under the pact, the Monitoring Commission may issue a written warning,

²⁵³ Law no. 62/2011 on social dialogue, with subsequent amendments

²⁵⁴ Labour Code (law no. 53/2003), with subsequent amendments

²⁵⁵ Information based on interviews conducted for the present report.

²⁵⁶ OECD, "Business Integrity in Eastern Europe and Central Asia", 2016.

²⁵⁷ OECD, "Business Integrity in Eastern Europe and Central Asia", 2016.

suspend a member temporarily from the integrity pact, or exclude the member permanently (subject to approval of the general assembly of signatory entities).²⁵⁸

However, all these initiatives have been initiated by the public sector or by the civil society, not by the business sector.

Cooperation with industry peers is even weaker and there are no publicity or awareness activities done by companies to promote the benefits of engaging in multi-stakeholder anti-corruption initiatives.

Business associations

Business associations' involvement for corporate integrity in Romania can be assessed at 25 out of 100, given that business associations very rarely take a visible stance against corruption and do not promote anti-corruption initiatives and tools.

Business associations in Romania are pretty active and involved in a continuous dialogue with the government on regulations concerning the activities of their members, but they rarely take visible stance against corruption, as interviews conducted for this report show. In fact, there is a very limited number business association in Romania that provides supporting materials or other forms of support to companies on how to strengthen their anti-corruption efforts to prevent corruption or to take remedies when corruption occurs. A case identified in the research for this report (through interviews) is the American Chamber of Commerce in Romania (AmCham Romania) that developed a set of guides and organised workshops for compliance and anti-corruption for companies. AmCham also worked with large state owned companies in Romania for the development of their compliance and anti-corruption programmes.

As already explained, interviews conducted for this report reveal that businesses are not generally interested in anticorruption because of the limited trust in integrity in Romania. Given the perception that corruption is necessary in order to win some contracts or to avoid unnecessary administrative fines in Romania, collective action approaches on the part of companies or business associations is still a taboo issue.²⁵⁹

²⁵⁸ Center for Integrity in Business of Transparency International Romania, several research publications in 2012-2014, https://www.transparency.org.ro/ro/tiropage/centrul-pentru-integritate-business.

²⁵⁹ Information based on interviews conducted for the present report.

Thematic area 14: Board of directors

Oversight

The oversight function of boards of directors in Romania can be assessed at 50 out of 100, given that:

- in large corporations the anti-corruption programmes apply, usually, to the Board of Directors or Oversight Boards. They are also responsible for monitoring the effectiveness of the company's governance practices. However, for SMEs governance is simple and very often personalised
- in most cases, when existent, the company's anti-corruption programme is overseen by the Board of Directors or Oversight Boards
- training of Board members is rare in Romania, including for anti-corruption issues despite the fact that they are formally in charge of overseeing the company's anti-corruption programme
- due to European Regulations on corporate reporting, reports on integrity are also published by large companies

Responsibility for monitoring governance

According to Romanian law²⁶⁰, a share-based company (as opposed to a limited liability company), can be organised in one of two ways: first, with a unitary management system, whereby a board of directors appoints managers, and second, a dual management system, with both an Oversight Board and a directorate (board of directors or one director). For limited liability companies, no boards, but only managers (administrators) are required by law.

Most Romanian companies are SMEs, which account for about 60% of the market value of all Romanian economy. The small and most of the medium companies are limited liability firms and do not have a formal governance structure. They are typically run by families and friends, while the general director is often the owner of the company. They also rarely have anti-corruption programmes, as shown above in this report.

Oversight of anti-corruption programmes

For international companies or large national companies, the Board of Directors or the Oversight Board is responsible for monitoring the effectiveness of the company's governance practices and this body is also governed by the anti-corruption programme of the company. When in place, the Board of Directors always receives regular status reports from the company's senior management. Recently, due to European Regulations on corporate reporting, these reports have begun including information related to integrity elements, and they are published.

Information and training of the board of directors

Moreover, the Boards of Directors are informed on cases of major incidents of corruption or integrity breaches and on the corrective actions. It is unclear, though, how much training on corruption is received by the members of the Boards of Directors.

²⁶⁰ Law no. 31/1990 on commercial legal persons, with subsequent amendments

Executive remuneration

The executive remunerations in Romanian companies, from the perspective of integrity, can be assessed at 25 out of 100, given the high degree of confidentiality related to executive remuneration in Romanian companies, with the exception of public companies (listed on the stock exchange).

More often than not, for Romanian companies, the company's remuneration policy and employment contracts for Board members and key executives are confidential, as are the recruitment policies. There is no information regarding the method of determining remuneration. Remuneration packages normally require shareholder approval, if the shareholder structure is small and the involvement of shareholders in the company management is strong, though not always formal. Exceptions are generated by the limited number of public companies (listed on the stock exchange).²⁶¹

Conflicts of interest

The corporate regulations and practices concerning conflicts of interest in Romanian companies' board of directors can be assessed at 25 out of 100, given that:

- Romanian companies are bound by legal provisions to avoid conflicts of interest involving Directors and/or Oversight Board members. In the case of dual management systems, the Oversight Boards members are independent from company management;
- There is extremely limited information on how legal/national and corporate regulations on avoiding conflicts of interest are actually applied. The researchers involved in drafting this report had particular difficulties in identifying sources of information to assess this indicator;
- Inside trading is prohibited by the law on companies.

Prohibition of conflicts of interest involving directors and supervisors

Members of the Oversight Board, in dual management systems, cannot be part of the directorate; they cannot manage the company, and they cannot be employees of the company. On the other hand, in a unitary management system, there is no difference between the board of directors and the management, but the managers cannot be employed in any other position in the company.

For the limited liability companies, only managers are required by law. There is a large number of small firms in Romania: over 95% of the number of Romanian firms are small, and over 71% of them have less than 49 employees²⁶². Therefore, most Romanian companies are limited liability companies. As emphasised above, only large companies have governance structures based on the activity of Boards of Directors.

According to Law no. 31/1990 on companies, members of the Oversight Board as well as members of the Board of Directors and the directorate in a dual management system cannot run their own business in conflict with the one they are already managing. Managers and directors cannot participate in the administration of another corporation without the approval of the shareholders, and potential conflicts of interest of management, board members and shareholders (including misuse of corporate assets and abuse in related party transactions) should be disclosed by the board members.²⁶³

²⁶¹ Information for this section has been provided via the interviews conducted for this report.

²⁶² Statistics provided by the National Statistics Institute

²⁶³ Art 144¹-144³ and art 150 of Law no. 31/1990 on companies

Enforcement of conflicts of interest regulations on directors and supervisors

However, practice is less solid than the regulation. Information on potential conflicts of interest from Board of Directors (and other senior representatives) is made publicly available by very few companies. This information should include outside appointments, parallel internal positions, financial investments and employment of relatives. Interviews show that this information is usually confidential, which makes monitoring conflicts of interest complicated and ineffective.²⁶⁴

Prohibition of inside trading

Regulations on the stock exchange, Government Emergency Ordinance no. 28/2002 strictly prohibits inside trading by any person, including employees, managers, but also directors and supervisors²⁶⁵. Monitoring of the stock exchange is ensured by specialised bodies and considered fairly effective.²⁶⁶

²⁶⁴ Information based on interviews conducted for the present report.

²⁶⁵ Art. 130-133 of the Emergency Government Ordinance 28/2002 regarding securities, financial investment services and regulated markets

²⁶⁶ https://m.bvb.ro/AboutUs/MediaCenter/PressItem/Historical-moment.-Romania-is-promoted-to-Emerging-Market-status/5021

Civil Society Assessment

Overall assessment

Although anti-corruption has been the overarching theme of the Romanian activism in recent years and it generated impressive public mobilisation and protests, the attention of civil society organisations and the media is on public corruption, and much less on business corruption and integrity.

In a vicious circle, existing corruption has a large impact on the freedom and quality of media and this undermines the capacity of the press to generate effective momentum for integrity, especially in the business sector. On the other hand, using the internet and social media, some NGOs have been able to raise awareness against corruption. However, activities targeting the "supply side" of corruption in order to boost business integrity are scarce, and in many cases short-term, without long-term vision and strategy.

Thematic area 15: Broader checks and balances Independent media

Romanian independence of media can be assessed at 50 out of 100 given that:

- media is only partly objective and independent of the private sector, being to a great extent dependent on private financing and controlled by media tycoons;
- media is legally free from the government, and censorship is not allowed by law. However, government influence, including intimidation of the media, is present and self-censorship is reported;
- media is very politicised and polarized, and standards of fairness and accuracy are rarely observed;
- investigative journalists have a good track record of uncovering corruption in the public sector, but less in the private sector.

Objectivity and independence of the media

According to Reporters Without Borders, Romania is the 47th country in the 2019 World Press Freedom Index with a score of 25.67 where 0 means a good situation and between 25 and 35 points reveals a problematic situation. Although very close to a satisfactory situation (under 25 points), the trend, when it comes to media freedom, is not a positive one.

Legal provisions on media independence

Media is legally free from the government and free from censorship²⁶⁷, but Reporters Without Borders stress that "a lack of government consideration for journalism and the media, growing political censorship and an increase in self-censorship are the main features of the current media landscape. The media have gradually been turned into political propaganda tools. They are much politicised, their financing mechanisms are opaque or even corrupt, and their editorial policies are subordinated to owner interests. Such are the disturbing phenomena that have become the norm in

²⁶⁷ Art. 30 of the Romanian Constitution

Romania."²⁶⁸ Equally concerning is the fact that the National Broadcasting Council does not really fulfil its regulatory role and does not condemn abuses.²⁶⁹

Media ownership

Concerning media ownership, around ten media owners are currently the target of criminal proceedings by the anticorruption prosecutor's office or by the prosecutor-general's office; many of them have political connections, and in many cases journalists complain (after resigning from their positions) about censorship by these owners.²⁷⁰

"The authorities are constantly pressuring journalists to reveal their sources and try to silence any criticism of the system. Government agents posing as journalists have recently started infiltrating news organisations. A few independent media outlets manage to survive alongside the big media groups, but they are subject to arbitrary tax and finance inspections whenever they criticise powerful politicians." ²⁷¹ Moreover, Reporters Without Borders underline that EU's General Data Protection Regulation (GDPR) is increasingly being used as grounds for denying access to public information, or to threaten and prosecute journalists in connection with their investigative reporting. ²⁷²

Concerning media track record of successfully uncovering corruption, Romanian investigative journalists focus on corruption in the public sector rather than the corruption in the private sector. For example, in several corruption cases regarding public procurement, privatisations or other aspects where public officials and private companies were involved, the media reported extensively on the investigation of the public officials and a lot less on the private involvement.²⁷³

Civil society engagement in business integrity

Romanian civil society engagement in business integrity can be assessed at 50 out of 100 given that:

- civil society has a track record of launching and supporting short-or long-term initiatives in key areas for the private sector, such as public procurement and cooperation with law enforcement, although business integrity is not the main topic and priority of NGOs involved in anti-corruption;
- such initiatives involve, in many cases, although not always, anti-corruption stakeholders from the public sector and civil society, but much less often from the private sector;
- such initiatives result, in some cases, in tangible outcomes and commitments, such as action plans, from all participating stakeholders. However, the engagement of the business sector remains very limited.

Anti-corruption initiatives of civil society organisations

Civil society has been one of the most important Romanian stakeholders in promoting anti-corruption policies. Since the 1990s, NGOs have been active in convening initiatives in key areas for the private sector, such as public procurement

²⁶⁸ Reporters Without Borders, 2019 World Press Freedom Index, https://rsf.org/en/romania. For more details on the World Press Freedom Index: https://rsf.org/en/world-press-freedom-index

²⁶⁹ See also the ActiveWatch reports on the freedom of press "FreeEx (2017-2018)": https://activewatch.ro/ro/freeex/publicatii/lansarea-raportul-freeex-2017-2018-libertatea-presei-in-romania and "FreeEx (2018-2019)": https://activewatch.ro/ro/freeex/publicatii/lansarea-raportul-freeex-2018-2019-libertatea-presei-in-romania/

²⁷⁰ Ibid. See Freedom House assessment of the freedom of the press in 2017. https://freedomhouse.org/report/freedom-press/2017/romania

²⁷¹ Ibid. Also see: https://www.theatlantic.com/ideas/archive/2019/06/europes-gdpr-elevated-privacy-over-press-freedom/590845/, June 3rd 2019.

²⁷³ Information provided in interviews.

and cooperation with law enforcement. More recently, in 2014-2015 and in 2017, numerous civic movements have emerged in the country, and a broad-based anti-corruption movement is growing in society, especially among the youth.²⁷⁴ "Activists and protestors have proven themselves to be a powerful force in Romanian politics. They have already achieved the cancellation of a large mining project, the resignation of a prime minister over a deadly nightclub fire and the withdrawal of emergency decrees designed to increase impunity. Civil society organisations have shown that they have a strong and wide-reaching base of popular support - and they know how to apply pressure".²⁷⁵

Cooperation with anti-corruption stakeholders and its results

However, according to interviews, most of these newer anti-corruption civic movements act more as watchdogs, in promoting systematic anti-corruption initiatives, and less as partners for the other stakeholders in the public and private sector.

On the other hand, more experienced NGOs are involved in extensive and strategic partnerships with anti-corruption stakeholders from the public sector, private sector and other civil society organisations. However, the engagement of the business sector remains very limited. Such initiatives resulted in impactful outcomes, like the 5 integrity pacts, including one for SMEs promoted by the Centre for Integrity in Business or Transparency International in Romania.²⁷⁶

Another initiative has been initiated by Romanian Business Leaders in partnership with the Romanian Centre for European Policy and with support from Raiffeisen Bank within the project Partners for Integrity. They created the Romanian Clean Business Coalition.²⁷⁷ The objectives of the coalition have been:

- To promote alignment with the standards of good business practice at European and global level;
- the adoption by a large number of companies of an ethical standard, in order to combat bribery;
- Self-regulation of the private sector by creating an ethical certification mechanism;
- To influence political decisions in the sense of adopting public policies that encourage honest business and marginalize onerous practices, educating company representatives and the general public on business ethics.

However, the project seems to have been moribund since 2015.

²⁷⁴ #rezist – Romania's 2017 anti-corruption protests: causes, development and implications. Quadriga University of Applied Sciences, http://eprints.bournemouth.ac.uk/29647/1/romanian_protests_2017_publication_FINAL_nk.pdf.

²⁷⁵ https://www.euronews.com/2019/12/11/romanian-civil-society-proved-its-strength-now-can-help-nurture-a-fragile-democracy-view

²⁷⁶ Center for Integrity in Business of Transparency International Romania, several research publications in 2012-2014,

 $^{{\}tt https://www.transparency.org.ro/ro/tiropage/centrul-pentru-integritate-business.}$

²⁷⁷ http://www.cleanbusiness.ro/?page_id=54

Civil Society monitoring of business integrity

Romanian civil society monitoring of business integrity can be assessed at 0 out of 100 given that:

- civil society pays significant attention to public integrity²⁷⁸, not to business integrity.
- there are very few high-profile and successful civil society activities of monitoring integrity in the private sector or advocacy campaigns with regard to business integrity, and all of those identified during the research for this assessment had ended at least three years before the initiation of the research.
- there are very few instances where businesses have taken positive action following Civil Society Organisation advocacy, but interest has not been sustained and lack of funding has affected these initiatives, according to interviews.

The Watchdog Role of Civil Society

Civil society organisations play an active watchdog role regarding public integrity. However, most of the anti-corruption initiatives and efforts of Romanian civil society focus on corruption and integrity in the public sector rather that in the private sector. There are very few organisations that conduct monitoring or research of business integrity in Romania. Transparency International Romania's initiative on business integrity provided several research outputs between 2011 and 2016.²⁷⁹ The Centre for Legal Resources conducted a research on compliance and ethics in business in 2013.²⁸⁰

Advocacy for business integrity

Transparency International Romania also initiated a large advocacy campaign for business integrity, mobilising several partners in civil society for business integrity promotion in Bucharest, but also in other cities and regions, through several regional summits.²⁸¹

The Centre for Integrity in Business (CIB) is a centre for resources through which Transparency International Romania promotes sustainable solutions for strengthening good governance based on ethical principles and seeks to develop partnerships between the public sector, private sector and civil society. The Centre constitutes a platform for active social dialogue between these three sectors; moreover, CIB also supplies the necessary tools to maintain this dialogue at a high level. During these last years, the Centre for Integrity in Business has launched an initiative to build a platform for business integrity and transparency in partnership with top companies from Romania. The platform is a network of companies and organisations, sharing the values and the objectives promoted by Transparency International Romania, meeting several times in order to discuss and put forward policy ideas for business integrity. This initiative was launched during a roundtable event in July 2013, which later resulted into a Pact for Integrity and Transparency in the Romanian business sector.²⁸²

²⁷⁸ See: http://www.romanianprotests.info, Ana Adi and Darren G. Lilleker (eds.), 2017, "#rezist – Romania's 2017 anti-corruption protests: causes, development and implications".

²⁷⁹ Center for Integrity in Business of Transparency International Romania, several research publications in 2012-2014, https://www.transparency.org.ro/ro/tiropage/centrul-pentru-integritate-business.

²⁸⁰ Centre for Legal Resources (2013), Ethics and Compliance in the Romanian Business Sector, research report, Bucharest; https://issuu.com/crjromania/docs/ethics_and_compliance_in_the_romani

²⁸¹ https://www.transparency.org.ro/en/tiropage/center-integrity-business

²⁸² https://www.businessintegrity.ro

Recommendations

Recommendations for the public sector

Short-Term Recommendations

- Develop and apply a performance assessment framework in the prosecution offices to increase their capacity to prosecute commercial bribery and other forms of corruption in the private sector.
- Apply an in-depth assessment of vulnerabilities and corruption risks in judicial proceedings to increase the capacity of the judiciary to sanction commercial bribery and other forms of corruption in the private sector.
- Strengthen the legal framework for sanctioning corruption and bribery in the private sector. A comprehensive analysis is needed in order to identify the causes for the very low number of investigations for corruption and bribery in the private sector and solutions to this problem.
- Accompany the transposition of the European Whistleblowing Directive with clear recommendations and guidelines on institutional procedures, in particular for public procurement departments, the tax and customs agency and other institutions in charge of administrative inspections. Of special importance are procedures to facilitate whistleblowing, to investigate the cases raised, and to ensure confidentiality and anonymity of whistleblowers.
- In order to avoid abuses, general guidelines for direct procurement and model procedures should be adopted by the government for the required institutional procedures excepted from Directive 2014/24 and the transposing law on public procurement (Law no. 98/2016) (especially for the procurement mentioned on Annex II of Directive 2014/24). Moreover, for better value for money in procurement, standard costs (as recommended by some European funded projects) could be used in price estimations for public procurement.
- Revise and accelerate the implementation of regulations on revolving doors and "cooling-off periods" to prevent conflicts of interests and corruption.
- Implement the programme for digitalisation of the National Agency for Fiscal Administration and put in place a
 strong monitoring system to limit personal interactions with taxpayers. For example, create a digital connection
 between private companies' invoicing system and the fiscal system to increase the monitoring capacity of the
 National Agency of Fiscal Administration, diminish the risk of tax avoidance, and limit substantially the risk of
 corruption related to fiscal inspections on site.
- Ensure independent monitors within the integrity pacts access to tender applications during the selection phase (not only after the contract is awarded), and implement integrity pacts for high corruption risk procurements with the participation of all bidders and subcontractors.
- Accelerate the digitalisation of public administration by adopting the Code of Administrative Procedure, and elaborate a national compliance register for businesses and citizens to avoid corruption in public controls and inspections made onto private sector entities.

Long-Term Recommendations

- Improve and facilitate the dialogue between the public sector and the business sector to ensure better
 regulations. Ensure the enforcement of the law regarding the transparency of decision-making and the
 requirement of consultation as part of it. Consultations with the private sector need to be effective and honest,
 not only formal.
- Increase the capacity of all anti-corruption and oversight authorities related to business integrity standards and corruption, involving the private sector and anti-corruption tools and standards for the private sector. This increased capacity can be achieved through regular training and coaching addressed to all the employees of the anti-corruption and oversight authorities. Special attention requires increasing of the oversight authorities' capacity to effectively verify beneficial ownership declarations in accordance with the new money laundering law following the 5th European Union Anti-Money Laundering Directive.
- Raise awareness and train public servants dealing with public procurement on anti-corruption and integrity. A
 national training programme and partnerships with Universities should be created with that purpose.
- Assess and amend legal provisions to widen the scope and definition of conflict of interests and include all types
 of interests, not only financial interests generated by family relationships. Currently, according to the Romanian
 law, there is a conflict of interest when a public official decides on a contract for a close family member, but
 there is no conflict of interest if the contract beneficiary is a close friend or former business partner.
- Strengthen provisions on the liability of accountants and auditors to ensure better enforcement of accounting and auditing standards. Reintroduction of criminal sanctions needs to be taken into account in this context.
- Simplify the taxation system to ensure better tax collection and the identification of tax errors among the taxpayers.

Recommendations for the Business sector Short-Term Recommendations

- Medium and large companies (over 50 employees or over EUR 10 million turnover or over EUR 43 million total assets) should develop, and publish an anti-corruption policy that clearly states their position against corruption. Companies should disclose anti-corruption policies and activities in their annual reports and on their websites. Every business should be guided by rules derived from this policy position and which clearly define (un)acceptable practices. Ideally, the implementation of this policy should be overseen by the Board of Directors and implemented by the relevant technical staff. Publishing the corporate anti-corruption policy and programmes is important as they generate public awareness on the standpoints of the company on corruption issues. These anti-corruption programmes should:
 - include clear and visible commitment against corruption and the commitment of the Chief Executive Officer or owner
 - o responsibilities for high level management and board of directors in the oversight of anti-corruption programmes

- o address the most prevalent risks of corruption, such as conflicts of interests, bribes, political contributions, charitable contributions and sponsorships, facilitation payments, gifts, hospitality and expenses, money laundering and collusion
- be visible to all stakeholders within and outside the company
- o be applicable to all levels, functions and areas of the company
- assess and address specific business risk
- o include sanctions, a monitoring and evaluation mechanism
- include human resource practices showing the company's commitment to the programme (for example recruitment, promotion, performance evaluation);
- o organize trainings of managers and employees on integrity issues
- o prepare internal communication regulation based on transparency in order to prevent corruption and to deal best with extortion and other risks
- provide platforms for feedback mechanisms and other internal processes supporting the continuous improvement of the programme
- Domestic companies, particularly SMEs operating in high corruption areas, should increase business integrity
 by adopting internal policies and procedures, including codes of conduct, whistleblowing channels and other
 anti-corruption measures. In order to make this possible, a public-private partnership or another form of
 inter-sectorial cooperation should establish a national compliance register for SMEs, including all
 compliance obligations and other tools companies can use in order to ensure compliance and integrity.
 Business associations and NGOs can provide guidance.
- Domestic and international companies, especially if they have over 50 employees, should establish anonymous
 and protection mechanisms for whistleblowing in order to encourage employees at all levels to report cases of
 corruption or other wrongdoing.
- Increase transparency in corporate reporting by publicly releasing companies' reports as well as their annual independent audits, conclusions and information on the audit providers. Increased transparency can be rewarded by being acknowledged in a public white list.
- Business associations should identify benchmarks for business integrity in each industry and acknowledge and reward companies who meet them by giving prizes and creating whitelists. A multistakeholders partnership should be established to operationalise this recommendation.
- Create clear and comprehensive standards to improve transparency in State Owned Enterprises and Municipality Owned Enterprises. The standards used for the assessment of transparency in corporate reporting (TRAC) should be the minimum required.

Long-Term Recommendations

- Companies should require anti-corruption due diligence of their partners and suppliers and create a database of clean companies.
- Business Associations and Chambers of Commerce should become active in promoting integrity and anticorruption programmes. They should engage with other stakeholders in long-term programmes to promote integrity and curb corruption, they should also promote integrity standards among their members, dedicate

workshops to integrity and compliance issues and engage in dialogue with public institutions to identify best solutions in promoting integrity among businesses. Moreover, Business Associations and Chambers of Commerce should engage in:

- o training for members, managers and directors on integrity issues;
- o support for companies to develop anti-corruption programmes;
- o support for companies to put in place effective anti-corruption measures, like whistleblowers' protection and reporting channels.

Recommendations for Civil Society

Short-Term Recommendations

- Transparency International Romania should advance the research on civil society, business and public sector
 projects promoting integrity and fighting corruption, and generate debates with multi-stakeholders and collective
 agreements on recommendations and concrete actions to improve business integrity.
- In cooperation with the government, the business sector and donors, civil society should promote business integrity through training supported by scholarships on the one hand, and capacity building activities on the other hand, so as to increase the frequency and quality of media coverage of the business sector.
- Promote a pledge to support (including financial support) independent reviews of corporate governance and integrity (including anti-corruption practices, consumers' rights, employees' rights etc.) by civil society organizations.
- Increase transparency, integrity and governance standards in NGOs.

Long-Term Recommendations

- Build civil society capacity to monitor the business sector through alliances and partnerships with governanceoriented civil society organizations and other stakeholders like media organisations, business associations and trade unions.
- Create a trust/fund for investigative journalism with contributions from companies that prioritise integrity among their values, since independent management can be a form of financing independent media, particularly the more expensive investigative type without the pressure from political parties or particular corporations.

ANNEX 1 - Possible effects of the COVID-19 pandemic on business integrity in Romania

In 2018 and 2019 the Romanian economy was growing (although the rate of growth was lower than in the past years). In 2018 the economic growth was 4.4% and in 2019 it was 4.1%. In 2019, an increase in both public and private minimum wages boosted public consumption and supported the growth together with robust investment supported by European funds and the construction sector. On the other hand, in 2019 the government deficit increased to 4.1% due to a higher cost of public officials' wages and an increase in old-age pensions.²⁸³

The COVID-19 pandemic has brought about important changes to economy and business in the entire world. For Romanian business, the pandemic's first effects have been related to economic slowdown and rise of unemployment, especially in the automobile sector -which is subject to foreign demand. The service industry was greatly affected during the lockdown from March 16 to May 14 and has not recovered completely in the subsequent months. Tourism as well as related industries (e.g. transportation, restaurants etc.) are greatly affected.

In June the European Commission's forecast estimated a GDP contraction of 6% for Romania for 2020²⁸⁴. However, in July Romania started to suffer a spike in COVID-19 cases, making it one of the most affected European countries during the summer. As a result, the economy is further affected by greater uncertainty and limitations to the economic activities, either imposed by state regulations or auto-imposed by entrepreneurs, and by the decrease in consumption among the population. This recent spike of cases has affected both the services – subject to restrictions in their activity and getting a lot less clients compared to other years – and production industries – forced to reinvent/reorganise their activities in order to ensure physical distance between workers.²⁸⁵

The deceleration of the economic activity started in March with a steep drop of the volume of economic activity by 30%, and a reduction by 22% in exports and by over 25% in imports. Additionally, confidence in the economy fell in March to the lowest level since July 2012.²⁸⁶

The government package of economic aid Increased to 2% of GDP. Most of the measures are similar to other countries and they are providing economic aid to those affected by the pandemic, such as:

- Providing guarantees for loans up to RON 10 billion, interest subsidies for working capital and investment loans and facilities for companies experiencing financial difficulties.
- Adopting a moratorium on bank loan repayment which allows to suspend the payment of loan instalments until December 31 2020 in order to help individuals and companies hit by the COVID-19 crisis.
- Accelerating VAT refund.

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²⁸³ World bank overview on Romania and European Commission, "2019 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011", Country Report Romania 2019.

²⁸⁴ European Commission, Summer 2020 Economic Forecast: A deeper recession with wider divergences. Available at: https://ec.europa.eu/info/business-economy-euro/economic-performance-and-forecasts/economic-forecasts/summer-2020-economic-forecast-deeper-recession-wider-divergences_en

²⁸⁵ Academia Română, "Impactul pandemiei COVID-19 asupra unor activitiăți economice din domeniul serviciilor și întreprinderilor mici și mijlocii", May 2020, https://acad.ro/SARS-CoV-2/doc/d12-ImpactCOVID-19-serviciiiIMM.pdf. See also: Daniel Anghel, PwC Romania, "Impactul crizei COVID-19 in industria auto. Scenarii privind evolutia din acest an", in doingbusiness.ro, August 10th 2020.

²⁸⁶ Csaba Bálint, "Impactul "marelui blocaj" asupra economiei prin prisma indicatorilor timpurii", in OpiniiBNR.ro, July 13th 2020.

- Suspending tax controls during the lockdown.
- Extending the payment terms for local taxes paid by the population.
- Postponing the payment of utilities and rents for small enterprises affected by the restrictions imposed to prevent the spread of COVID-19.

Yet, unemployment benefits have left space for fraud from a limited number of companies which claimed the benefits but continued working and paying their employees off the books as well.²⁸⁷ This effect of the aid package is an indicator for the risk of the grey economy growing in the aftermath of the COVID-19 pandemic. In order to make benefits for businesses easily available for firms in need, the government imposed very light administrative conditions to access the benefits. This was very good for all businesses in need, but also allowed abuses: benefits have been requested by businesses who didn't qualify. Suspending labour contracts officially but continuing mobilising workers and paying them off the books generated a risky working environment for the respective employees, as confirmed by the declarations of the minister of labour.²⁸⁸ On the other hand, in order to cut costs, retailers started selling more off the books, without using cash registers, as proved by the inspections of the fiscal administration in July 2020.²⁸⁹

On the other hand, the guaranteed loans for businesses are considered insufficient by the private environment. Immediately after launching the economic aid package, a problem with the digital platform actually blocked its deployment. Subsequently the demand overpassed the available aid and, although the state answer was quick, access to loans is slowed by the due diligence procedures of the banks.

In addition, the National Bank of Romania (NBR) quickly implemented a package of exceptional measures, such as:

- Reducing the monetary policy interest rate from 2.5% to 2%.
- Maintaining the interest rate for deposit facility at 1.5% (in order not to reduce the deposit remuneration in the banking system).
- Lowering the interest rate related to the lending facility to 2.5%, from 3.5%.
- Providing liquidity to credit institutions through repo transactions (a repurchase agreement for government securities) in order to ensure the smooth functioning of the monetary market and other segments of the financial market.
- Purchasing government securities in national currency on the secondary market in order to strengthen the structural liquidity of the banking system.

Overall, the COVID-19 pandemic generated a steep acceleration of the digitalisation plans and projects for public administration, including some additional elements in the fiscal administration and companies' communication with other state institutions. Although beneficial and welcomed by the business community, digitalization measures have been sometimes rushed and the interaction with the business sector is perceived as "overcomplicated". In order to establish an account in the public procurement platform for a company that could sell produces or provide services (including the

²⁸⁷ The risk of using state subsidies for unemployment and, in the same time, mobilizing employees to work off the books have been identified by the Minister of Labour, Violeta Alexandru on several declarations in April and May. The declarations has been reflected by mass media (e.g.: https://ziare.com/locuri-de-munca/somaj-tehnic/ministrul-muncii-unii-angajatori-si-au-chemat-angajatii-la-munca-desi-au-depus-actele-pentru-somajtehnic-sunt-peste-600-000-de-romani-beneficiari-1608275, https://www.digi24.ro/stiri/actualitate/ce-trebuie-sa-faca-angaiatii-care-desi-trecuti-insomaj-tehnic-au-fost-chemati-la-munca-1296865, https://romania.europalibera.org/a/violeta-alexandru-primele-sanctiuni-pentru-incalcari-lasomajul-tehnic-sunt-pregatite/30600695.html) 288 Ibid.

²⁸⁹ Inspections of the fiscal administration in July 2020 reflected by media: https://stirileprotv.ro/stiri/economie/comerciantii-nu-mai-folosesc-caselede-marcat-iar-piata-neagra-infloreste.html

one needed for COVID-19) for public institutions, if the company didn't sell to public institutions before, the process takes about 1 week and several confirmation emails. The interviewed business representatives would appreciate online business-administration communication to be simplified.

In the field of public procurement, the COVID-19 pandemic generated a huge and urgent demand for health products and equipment. As in the other European countries, emergency direct procurements (negotiation without publication) have been used. Recognising these procedures are the only ones provided by the law and suitable to the situation and the current needs, however, this creates increased opportunities for irregularities and even fraudulent behaviour. By July, the National Anticorruption Directorate was investigating 50 cases of corruption related to medical supplies and other type of procurements related to the COVID-19 pandemic.²⁹⁰

Major risks related to business integrity in Romania in 2020 and the following years, generated or exacerbated by the COVID-19 pandemic and the subsequent economic crisis are:

- Corruption risks related to public procurement, especially emergency direct procurements.²⁹¹
- **Abuse and fraud related to the aid packages to businesses** both from the Romanian government and the European Union.²⁹²
- **The rise of the informal sector of the economy**, as more people find themselves in precarious employment, which has direct impact on levels of corruption and the efficiency of anti-corruption policies.²⁹³
- **Business to business corruption** (conflicts of interest, commercial bribery, abuses), due to the fact that companies rapidly onboard new third parties to help them respond to the crisis and robust onboarding, screening, procurement and payments controls (even where existing) are relaxed or overlooked to speed up onboarding and secure products or services.²⁹⁴

Digitalisation and transparency are needed by public administration and the business sector. The acceleration of the digital processes is an opportunity generated by the crisis. The digitalisation supports increased transparency and accountability, offering information and data that can be:

- Easily communicated to the public and, by government and the companies,
- Used by watchdog organisations and journalists to unveil corruption,
- **Used by oversight authorities** to control without additional administrative burden and to identify fraud.

Moreover, transparency of businesses during the COVID-19 crisis is an important statement of their values and helps them identify trustworthy business partners who embrace the same values.

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²⁹⁰ https://www.bursa.ro/dna-50-de-dosare-de-coruptie-legate-de-pandemia-covid-19-42001047

²⁹¹ One important case is the National Anticorruption Directorate investigation of the director of *Unifarm*, the Romanian state-owned enterprise in charge with part of the procurement of dogs and medical equipment. See NAD press release: https://www.pna.ro/comunicat.xhtml?id=9838.
²⁹² The risk is confirmed by the previous experience of Romania (see European Commission, "Statistical evaluation of irregularities reported for 2018: own resources, agriculture, cohesion and fisheries policies, pre-accession and direct expenditure", October 2019, https://eurlex.europa.eu/resource.html?uri=cellar:22fb14cb-ec11-11e9-9c4e-01aa75ed71a1.0001.02/DOC_2&format=PDF)

²⁹³ Se the previous reference on the declarations of the minister of labour.

²⁹⁴ The risk is not specific to Romania. For more details see the Alliance for Integrity program to promote integrity in times of crisis: https://www.allianceforintegrity.org/en/offer/integrity-in-times-of-crisis/index.php and the results of the Integrity Marathon on August 4th 2020: https://www.allianceforintegrity.org/en/events-and-training-activities/events/details.php?id=119.

ANNEX 2 - Romanian relevant institutions for the BICA

HCCJ - High Court of Cassation and Justice

The High Court of Cassation and Justice is the supreme court in the hierarchy of courts in Romania. The HCCJ has the power to ensure the unitary interpretation and application of the law by the other courts and to judge the second appeal in the interest of the law. The management of the High Court of Cassation and Justice is ensured by the institution President, two Vice-presidents and the Management Board.

The High Court of Cassation and Justice's General Assembly main general competences:

- It approves the yearly activity report;
- It approves the budget of the High Court of Cassation and Justice, based on assent from the Ministry of Public Finance:
- It elects two members for the Superior Council of Magistracy.

Romanian abbreviation: ICCJ
Official website: http://www.scj.ro/en

The Public Ministry – The Prosecutor's Office attached to the High Court of Cassation and Justice

The Public Ministry consists of all the prosecutor's offices in the country and represents, together with the courts, the judicial authority in Romania. The Public Ministry acts for the permanent assurance of the legality of the dispositions issued by the prosecutors in leading positions. The Public Ministry is independent in its relations with the other authorities and exercises its attributions only on the basis of the law and to ensure its enforcement.

The role of the Public Ministry:

- In the judicial activity, the Public Ministry represents the general interests of the society and defends the rule of law, as well as the rights and freedoms of citizens;
- The Public Ministry exercises its powers through prosecutors constituted in prosecutor's offices;
- The prosecutor's offices are attached to the courts, conduct and supervise the criminal investigation activity of the judicial police.

The Prosecutor's Office attached to the High Court of Cassation and Justice is organized in directions, sections, services and offices. Two of its' substructures - the Directorate for Investigating Organized Crime and Terrorism (DIOCT) and the National Anti-Corruption Directorate (NAD) have legal personality and their own operating laws. Prosecutor's Office attached to the High Court of Cassation and Justice is composed by 246 prosecutor offices.

Romanian abbreviation: PGICCJ

Official website: http://www.mpublic.ro/en

NAD – National Anti-corruption Directorate

The National Anti-corruption Directorate is a prosecutor's office specialized in combating corruption, at high and medium level, and it functions within the Prosecutor's Office attached to the High Court of Cassation and Justice. The institution deals with the fight against and prevention of corruption offences that have caused damage amounting to more than EUR 200,000, or if the object of the crime is assessed at more than EUR 10,000. The NAD organization model was inspired by similar structures in Spain, Norway and Belgium.

Romanian abbreviation: DNA

Official website: https://www.pna.ro/index.xhtml

DIOCT- the Directorate for Investigating Organized Crime and Terrorism

The Directorate for Investigating Organized Crime and Terrorism is a directorate within the Prosecutor's Office attached to the High Court of Cassation and Justice. DIOCT was established in 2004 by Law 508/2004 in order to stop organized, border and cross-border criminal groups. The Directorate for Investigating Organized Crime and Terrorism conducts investigations in the field of serious crimes, defined by Law no. 39 / 2003 on the prevention and fight against organized crime. DIOCT is independent in relation to the courts and prosecutor's offices, as well as in relations with the other public authorities.

The Directorate carries out the criminal prosecution exclusively for the following offences:

- human trafficking;
- trafficking of minors;
- disclosure of state secrets:
- child pornography;
- offences against the national security of Romania;
- all drug trafficking offences.

Romanian abbreviation: DIICOT Official website: https://www.diicot.ro/

CJIS – Criminal Justice Investigation Section

The section for investigating criminal offences in justice is an operative structure of the Prosecutor's Office attached to the High Court of Cassation and Justice, whose operationalization took place on October 23rd, 2018. The section for the investigation of criminal offences has the exclusive competence to carry out the criminal prosecution for the crimes committed by judges and prosecutors, including military judges and prosecutors and those who have the status of members of the Superior Council of Magistracy. Also, the section for the investigation of criminal offences of justice retains the competence of criminal prosecution whenever, in addition to the persons mentioned above, other persons are investigated.

The Criminal Justice Investigation Section has the following tasks:

- carrying out the criminal prosecution, under the conditions provided in Law no. 135/2010, as subsequently amended and supplemented, for the offences within its competence;
- establishing and updating the database in the field of offences in the field of competence;
- the exercise and withdrawal of the remedies in the cases within the jurisdiction of the Section, including in the
 cases before the courts or permanently resolved prior to its operation according to the Government Emergency
 Ordinance no. 90/2018 regarding some measures for the operationalization of the Section for the investigation
 of criminal offences in justice;
- the exercise of other powers provided by law.

Romanian abbreviation: SIIJ

Official website: <a href="http://www.mpublic.ro/ro/content/sec%C8%9Bia-pentru-investigarea-infrac%C8%9Biunilor-diniusti%C8%9Bia-pentru-investigarea-infrac%C8%9Biunilor-diniusti%C8%9Bia-pentru-investigarea-infrac%C8%9Biunilor-diniusti%C8%9Bia-pentru-investigarea-infrac%C8%9Biunilor-diniusti%C8%9Bia-pentru-investigarea-infrac%C8%9Biunilor-diniusti%C8%9Bia-pentru-investigarea-infrac%C8%9Biunilor-diniusti%C8%9Bia-pentru-investigarea-infrac%C8%9Biunilor-diniusti%C8%9Bia-pentru-investigarea-infrac%C8%9Biunilor-diniusti%C8%9Bia-pentru-investigarea-infrac%C8%9Bia-pentru-invest

GAD –Anti-corruption General Directorate

The Anti-Corruption General Directorate, established by Law no 161/2005, is the specialized structure for preventing and combating corruption within the Ministry of Internal Affairs (MIA) staff. Its objective is focalized on prevention and fight against corruption's offences in which the ministry staff can be involved. The Anti-corruption General Directorate establishes cooperation with the public and private organizations with competences in preventing and fighting corruption.

Anti-corruption General Directorate has the capacity to:

- take the specific operative measures in order to prevent corruption crimes, and to combat corruption offences involving the staff of MIA;
- receive citizens' complaints/petitions on the alleged corruption offences involving the staff of MIA;
- perform judicial police activities, according to the law;
- organize and perform activities for testing the professional integrity of the ministry staff;
- perform activities of international cooperation and collaboration relations, according to the interests of the Ministry of Internal Affairs;
- constitute and administrate the unit's data base concerning acts and offences of internal corruption;
- analyse the evolution of the MIA staff corruption offences, and inform the Minister of Internal Affairs or other competent bodies.

Romanian abbreviation: DGA

Official website: http://www.mai-dga.ro/eng/

NIA – National Integrity Agency

The National Integrity Agency (ANI) is an autonomous administrative authority in Romania, with legal personality, which operates at national level as a single structure, based on Law no. 144/2007 on the establishment, organization and operation of the National Integrity Agency, as well as for modification and completion of other normative acts, with subsequent amendments and based on Law no. 176/2010 on integrity in the exercise of public functions and dignities, for amending and supplementing Law no. 144/2007, previously mentioned. The purpose of the Agency is to ensure integrity in the exercise of public dignities and functions and to prevent institutional corruption, by exercising responsibilities in assessing wealth declarations, wealth data and information, as well as changes in assets, incompatibilities and potential conflicts of interest of the persons provided in article 1 of Law no. 176/2010, with subsequent amendments, during the exercise of public functions and dignities.

The Agency exercises, among others, the main following tasks. It:

- verifies the declarations of wealth and interests of public officials;
- performs the control of the timely filing of the declarations of wealth and the declarations of interest by the persons provided by law;
- notes whether between the assets acquired during the exercise of the function and the incomes obtained during the same period there is a clear difference that cannot be justified, and it notifies the competent court to

determine the part of the acquired assets or of the determined asset acquired with an unjustified character, whose confiscation it requires;

- notes the non-observance of the legal provisions regarding the conflicts of interest and the regime of incompatibilities;
- notifies the criminal prosecution body if there is substantive evidence or indications regarding the commission of certain acts provided by the criminal law;
- applies the sanctions and takes the measures provided by the law within its competence or, as the case may be, notifies the competent authorities or institutions with a view to taking the measures and applying the sanctions provided by the law.

Romanian abbreviation: ANI

Official website: https://www.integritate.eu/Home.aspx

SCM – Superior Council of Magistracy

The Superior Council of Magistracy is the institution with the role of guarantor of the independence of justice, which proposes to the President of Romania the appointment and dismissal of judges and prosecutors, and ensures the proper performance of their professional activity. The Council is the competent institution regarding the recruitment, promotion, transfer, posting, disciplinary sanction and dismissal of judges and prosecutors. The SCM has an important role in terms of initial training and lifelong learning of magistrates, given that the institution coordinates the activities of the National Institute of Magistracy (INM) and the National School of Clerks, according to the constitutional provisions.

The Superior Council of Magistracy has the role of defending judges and prosecutors against any act of interference in or in connection with professional activity, which could affect the independence or impartiality of judges, respectively the impartiality or independence of prosecutors in disposing of solutions, according to Law no. 304/2004 on the judicial organization, republished, with subsequent amendments and completions, as well as against any act that would create suspicions regarding them.

Romanian abbreviation: CSM

Official website: https://www.csm1909.ro/

NIM – National Institute of Magistracy

The National Institute of Magistracy is a public institution with legal personality, under the coordination of the Superior Council of Magistracy, which functions according to Law no. 304/2004 on judicial organization, Law no. 303/2004 on the statute of the magistrates and of Law no. 317/2004 on the Superior Council of Magistracy, the Regulation of the National Institute of Magistracy approved by Decision no. 320/2005 of the Superior Council of Magistracy, as subsequently amended and supplemented. The Institute is charged with the initial training of the future magistrates (judges and prosecutors), the lifelong learning professional training of magistrates who are already in office, as well as the training of trainers, in accordance with the law.

Romanian abbreviation: INM Official website: http://inm-lex.ro/

Judiciary Inspection

The Judiciary Inspection is a structure with legal personality within the Superior Council of Magistracy; it contributes to improving the quality of the act of justice, the efficiency and effectiveness of the activity of courts and prosecutor's offices, through independent verifications, according to the law and to ensure compliance with the law.

Judicial inspection, through judicial inspectors, mainly carries out the following types of control:

- control regarding the managerial efficiency and the way of performing the competences that derive from laws and regulations, by the management of the court or the prosecutor's office;
- control regarding the observance of the procedural and regulatory norms by judges / prosecutors and the specialized auxiliary personnel within the courts and prosecutor's offices;
- thematic control;
- control regarding the correction of the deficiencies found as a result of previous checks.

Official website: http://www.inspectiajudiciara.ro/

ASPAAS - Authority for Public Oversight of the Statutory Audit Activity

The Authority for Public Oversight of the Statutory Audit Activity is the competent authority in the field of public interest supervision of the statutory audit, and it exercises its powers according to the provisions of Law no. 162/2017. ASPAAS is a public institution, with legal personality, having the role of ensuring supervision in the public interest, according to the principles included in Directive 2006/43 / EC, ensuring the application, implementation and follow-up of the normative acts issued at European Union level, transposed into national law or directly applicable in the fields provided by law.

Romanian abbreviation: ASPAAS

Official website: https://www.aspaas.gov.ro/

CECCAR - Body of Expert and Licensed Accountants of Romania

CECCAR is the professional body that manages the accounting profession in Romania and operates on the basis of Government Ordinance no. 65/1994 on the Organisation of the Certified Public Accountants' and Chartered Accountants' Practice, republished, with the subsequent modifications and completions. The Body of Accounting Experts and Licensed Accountants of Romania (CECCAR) is represented in all 41 counties of the country and in the Municipality of Bucharest, through territorial chapters.

Romanian abbreviation: CECCAR Official website: http://ceccar.org/en/

CFAR - Chamber of Financial Auditors of Romania

The mission of the Chamber of Financial Auditors of Romania ("CFAR") is to build, on a solid basis, the identity and public recognition of the profession of financial auditor in Romania, having as main objective the sustained development of the profession and its strengthening with the Auditing Standards and the Code regarding ethical and professional conduct in the field of financial audit, by fully assimilating the International Standards and IFAC Code of Ethics, thus allowing financial auditors, members of the CFAR to provide high quality financial audit services, in the public interest, in general, and of the business community in particular. It is a professional body and its main goal is to organize,

legislate, conduct and control the financial auditors in the whole country. At present, there are 4.251 sole practitioners, 975 legal persons or entities and 1.640 trainees.

The financial audit activity in Romania is managed, coordinated and authorized by CFAR, under the oversight of the Authority for Public Oversight of the Statutory Audit Activity. Another objective of the Chamber of Financial Auditors of Romania is to develop the financial auditor profession, by assuring that the financial auditors, which are CFAR members, apply the highest professional and ethical standards established by the European and international institutions. Another important goal of CFAR is to ensure the protection of its members, and to promote the trademark of the institution, for the benefit of the financial auditor profession and accountancy in Romania.

Romanian abbreviation: CAFR

Official website: https://www.cafr.ro/en/

NAFA - National Agency for Fiscal Administration

The National Agency for Fiscal Administration (NAFA) was established on October 1, 2003 under the Ministry of Public Finance, by the Government Ordinance no. 86/2003, as a specialized body of the central public administration. Starting with January 2004, it became operational, acquiring the quality of an institution with its own legal personality, by detaching the directorates with attributions in the administration of state revenues within the Ministry of Public Finance. Having attributions in the application of the fiscal administration policy, ANAF carries out its activity in the field of budget revenue administration, through the procedures of: management, collection, fiscal control and the development of partnership relations with taxpayer.

ANAF has the mission to ensure the resources for the public expenses of the company by collecting and managing efficiently and effectively the taxes, fees, contributions and other amounts due to the general consolidated budget, as well as to improve the relationship between the institution and the taxpayer. requirements of the citizen in his double position of user and beneficiary.

Romanian abbreviation: ANAF Official website: https://www.anaf.ro

NOPCML - National Office for Prevention and Control of Money Laundering

The National Office for the Prevention and Combating of Money Laundering (NOPCML) is the Romanian Financial Intelligence Unit (FIU) of administrative type, with a leading role in the elaboration, coordination and implementation of the national system for combating money laundering and terrorist financing.

The National Office for Preventing and Combating Money Laundering started its activity in 1999, functioning as a specialized body with legal personality under the Romanian Government, until November 2019 when it was subordinated to the Ministry of Public Finance.

NOPCML has as object of activity the prevention and combating of money laundering and terrorist financing, purpose for which it receives, analyzes, processes information and notifies the Prosecutor's Office attached to the High Court of Cassation and Justice under the law, and if it is found, the existence of suspicious operations to finance acts of terrorism is immediately notified by the Romanian Intelligence Service.

The main functions of the National Office for Prevention and Control of Money Laundering are:

- Receiving, analysing and processing financial information;

- Supervision, verification and control of the reporting entities which are not, according to the law, under the prudential supervision of another authority;
- Enforcement of anti-money laundering regulations and sanctions in accordance with the international sanctions regime;
- Receiving, processing and analysing requests of information.

Romanian abbreviation: ONPCSB Official website: http://www.onpcsb.ro

The Competition Council

The Competition Council, in its capacity as a national authority in the field of competition, implements and ensures compliance with national but also Community competition provisions. At the same time, the Competition Council has the role of national contact authority in the field of state aid between the European Commission, on the one hand, and public institutions, providers and beneficiaries of state aid, on the other.

The Competition Council also has the role of representing Romania in relations with international organizations and institutions of profile; it is also responsible for the relationship with the institutions of the European Union, according to the relevant provisions of European law, and cooperates with other competition authorities. The activity of the Competition Council is carried out on two main components: a preventive one - market monitoring and surveillance of the actors in these markets, and a corrective one aimed at restoring and ensuring the development of a normal competitive environment. Thus, the mission of the Romanian competition authority can be defined synthetically as being to protect and stimulate competition on the Romanian market in order to develop a normal competitive environment, so that the best interests of consumers can be promoted.

Official website: http://www.consiliulconcurentei.ro/en

Permanent Electoral Authority

The Permanent Electoral Authority (AEP) is an autonomous administrative institution with legal personality and general competence in electoral matters, which has the mission to ensure the organization and conduct of elections and referendums in Romania, as well as the financing of political parties and electoral campaigns, respecting the Constitution, law and relevant international and European standards.

The mission of the Permanent Electoral Authority is to:

- provide and constantly improving the legal and organizational framework for elections and any other consultations, at national or local level, as well as for the financing of political parties, in accordance with instruments of international law, the EU' acquis and constitutional provisions;
- ensure the unitary implementation, throughout the country, of the specific legal provisions in the field of elections and in the field of political parties financing and control the fulfilment of the competences and duties assigned to other public administration authorities with responsibilities in the field;
- educate voters and other participants in elections;
- represent the Romanian state as its main image vector in terms of the degree of democratization of Romania, measured by the exercise of electoral rights, equal opportunities in political competition and transparency in financing the activity of political parties and electoral campaigns.

Romanian abbreviation: AEP

Official website: https://www.roaep.ro/prezentare/en/

The Romanian Court of Accounts

The Romanian Court of Accounts is one of the fundamental institutions of the state of law that combine financial, operational and organizational independence, in keeping with the Lima Declaration recommendations on public finance control guidelines. Their activity is independent/ autonomous from other institutions, by means of external public audit procedures, laid down in their own audit standards, drafted in accordance with the international audit standards. The Romanian Court of Accounts has a key role in promoting accountability in the use and management of public funds, including those granted to Romania by the EU and other international financial institutions. Another role of the institution is to preclude fraud and budgetary inefficiency, while establishing a firm climate to rigorously observe financial discipline, in keeping with good financial management principles. The Romanian Court of Accounts is committed to eliminate errors and irregularities and to improve money management.

Official website: http://www.curteadeconturi.ro/DefaultEN.aspx

NAC - National Audiovisual Council / National Broadcasting Council

The National Audiovisual Council (CNA) is the only regulatory authority in the field of audiovisual programs, an autonomous public institution under parliamentary control, led by a council of 11 members. They are appointed, for a term of six years, by the Romanian Parliament, at the proposal of the Senate (3), the Chamber of Deputies (3), the President of Romania (2) and the Government (3).

CNA's mission is to ensure a climate based on free speech and public accountability in the audiovisual field. It ensures that the general public and children in particular are protected from inappropriate or abusive TV and radio programs. The National Audiovisual Council also represents the state regarding the Romanian TV and radio industry and issues broadcasting licenses; works closely with key partners to understand the industry and provide a support and monitoring role. CNA holds public meetings every week and is empowered by the Romanian Parliament to monitor the editorial content of broadcasters and to take action in case of violation of the rules that apply to them.

Romanian abbreviation: CNA

Official website: http://www.cna.ro/-English-.html

CCIR – Chamber of Commerce and Industry of Romania

The Chamber of Commerce and Industry of Romania is one of the most important forums for representing Romanian businessmen. An exponent of the free market economy, the Chamber of Commerce and Industry of Romania has actively contributed to the development of the business environment and, implicitly, of Romania. Consistent with the specific mission of the Worldwide Network of Chambers of Commerce, the Chamber of Commerce and Industry of Romania supports the business community and its interests, through specific requests for representation and advocacy, maintaining an open dialogue with public administration authorities, civil society and international public and private bodies. The Chamber of Commerce and Industry of Romania is positioned as a moderating factor between the political decision-maker and the private environment, being fully committed to shaping and influencing public policies to support

entrepreneurship and the business environment. The Chamber of Commerce and Industry of Romania contributes to the elaboration of economic policies following consultation with the business environment, and initiates projects designed to stimulate the attraction of foreign investments, an essential aspect for the future development of Romania. The CCIR is fully engaged in debates in the public space regarding the draft normative acts with an impact on the business environment and militates for the cultivation and extension of a transparent culture of the public authorities, an essential condition for a healthy economic atmosphere internally, but also for the external promotion of Romania. CCIR has autonomous, non-governmental, apolitical, non-patrimonial territory organizations of public utility, with legal personality, created in order to represent, defend and support the interests of the business community.

Romanian abbreviation: CCIR Official website: https://ccir.ro/

NTRO – National Trade Register Office

The National Trade Register Office (NTRO) is the public institution, with legal personality, organized under the subordination of the Ministry of Justice, financed entirely from the state budget, whose activity is regulated by the provisions of Law no. 26/1990 on the trade register, republished with subsequent amendments and completions. The National Trade Register Office performs the following functions:

- keeping the trade register;
- issuing documents and information;
- archiving the documents based on which registrations are made in the trade register;
- providing assistance to the natural and legal persons subject to registration in the trade register;
- publishing the Insolvency Bulletin.

With regard to the services provided by the NTRO, they can be grouped as follows:

- Assistance to interested persons for registration in the trade register;
- Identification of a company (unique registration code, name, headquarters);
- Statistics structured on different criteria;
- Information on the evolution of a company from registration to date;
- Confirming the non-existence of a company or finding its strike-off.

Romanian abbreviation: ONRC

Official website: https://www.onrc.ro/index.php/en/

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