

Extract from
assessment report

**BUSINESS INTEGRITY
COUNTRY AGENDA
ROMANIA**



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 experts¹. 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.² 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.³ 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 with the problem⁴. But, the limited

¹ Niculae Bădăla, 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 Ivaşcu, 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 Vilnoiu, 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 Văju, 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 Bălașa, representative of Apostrof SRL, Bogdan Tistea, representative of WebWin SRL.

² 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.

³ Maria Cirtautas, *The Post-Leninist State: A Conceptual and Empirical Examination* in „Communist and Post-Communist Studies”, vol. 28, 1995, pp. 379-392.

⁴ 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

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 ⁵.

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 2016.⁶ 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 Barometer⁷ and other surveys⁸. 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.⁹

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 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).

Administration 2005-2020, (c) the National Anti-Corruption Strategy 2012-2015, (d) the National Anti-Corruption Strategy 2016-2020.

⁵ 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-under-cvm/cooperation-and-verification-mechanism-bulgaria-and-romania_en (Accessed December 19th 2017).

⁶ 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).

⁷ 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).

⁸ 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).

⁹ Natalia Milewski, Valentina Dimulescu, *Human Assisted Content Analysis of the print press coverage of corruption in Romania*, report of the Romanian Academic Society and Università degli 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).

Public Sector Assessment

The scores for the public sector are as follows:

	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

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

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 multi-stakeholder 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 anti-corruption 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.						<i>Independent media</i>
3.1.2.						<i>Involving civil society in business integrity</i>
3.1.3.						<i>Civil society monitoring of business integrity</i>

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.

