



## COMBATING CORRUPTION OFFENCES

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### **Abstract**

*Corruption remains a challenge at national and regional levels. This phenomenon affects society in the most diverse ways, being likely to generate negative consequences both in the economic and social life of citizens. At the level of the European Union, it is estimated that the phenomenon of corruption generates costs for the European community in the amount of 120 billion EURO, and over 69% of European citizens consider corruption unacceptable.*

**Key words:** *corruption, strategy, combating tools, legislative framework, solutions.*

### **INTRODUCTION**

Corruption remains a challenge at national and regional levels. This phenomenon affects society in the most diverse ways, being likely to generate negative consequences both in the economic and social life of citizens. Therefore, during the last years it could be observed that the phenomenon of corruption has affected the life, physical integrity, trust towards state institutions and citizens' patrimony.

Corruption remains a cause that limits Romania's development prospects and the ability to promote foreign policy objectives, including Romania's image in the international environment.

The Treaty on the functioning of the EU establishes that the phenomenon of corruption represents a field of crime with a particular gravity and cross-border dimension [Article 83 (1) of the TFEU].

According to the EU's Anti-Corruption Report, the phenomenon of corruption generates costs for the European community in the amount of 120 billion Euros, and over 69% of European citizens consider corruption unacceptable.

At the national level by Government Decision no. 1269/2021 the National Anti-corruption Strategy 2021-2025 was approved. Through this instrument,

guidelines and instruments are established regarding the fight against the phenomenon of corruption.

Broadly speaking, the National Anticorruption Strategy brings together institutional transparency and corruption prevention measures, regulated by various normative acts regarding: ethical/deontological/conduct code, ethics advisor, declaration of assets, declaration of gifts, conflicts of interest, incompatibilities, transparency in the decision-making process, access to information of public interest, whistleblower protection in the public interest, post-employment prohibitions within public institutions (pantouflages), sensitive functions, integrity risk management and ex-post evaluation of integrity incidents.

The importance of combating the fight against corruption has been constantly illustrated by the European Commission in the reports of the Cooperation and Verification Mechanism (CVM), in the reports of the Group of States against Corruption (GRECO), as well as in the recommendations of the Venice Commission.

In Romania, the main public institutions whose activity falls within the scope of the fight against corruption are the following: the Ministry of Justice, the Ministry of Internal Affairs, through the General Anti-Corruption Directorate and the Romanian Police, The National Integrity Agency, the Prosecutor's Office attached to the High Court of Cassation and Justice, the National Anti-Corruption Directorate and the Department for the fight against fraud and the Prime Minister's Control Body.

## **1. LEGAL FRAMEWORK**

At the national level, the main corruption offenses are regulated in the Criminal Code and Law no. 78/2000 for the prevention, discovery and sanctioning of acts of corruption, with subsequent amendments and additions.

The Criminal Code criminalizes acts of corruption under Title V, Offenses of Corruption and Service, Chapter I - Offenses of Corruption.

Law no. 78/2000, with subsequent amendments and additions, criminalizes crimes assimilated to corruption crimes within the scope of Article 10 - 13, and within Article 18 sections 1 - 18 sections 5 crimes against the financial interests of the European Union.

By Emergency Ordinance no. 43/2002, the National Anticorruption Directorate was established. The National Anticorruption Directorate is independent in relation to the courts and the prosecutor's offices next to them, as well as in the relations with the other public authorities, exercising its powers only on the basis of the law and to ensure its compliance.

The competence of the National Anticorruption Directorate is provided for in Article 13 of the previously mentioned normative act. Therefore, the National Anti-corruption Directorate is responsible for the offenses provided for in Law no. 78/2000, with subsequent amendments and additions, made under one of the

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following conditions: if, regardless of the quality of the persons who committed them, they caused material damage greater than the equivalent in RON of 200,000 euros or if the value of the amount or the property that forms the object of the crime of corruption is greater than the equivalent in RON of 10,000 euros; if, regardless of the value of the material damage or the value of the amount or the asset that forms the object of the corruption crime, they are committed by: deputies; senators; the Romanian members of the European Parliament; the member designated by Romania in the European Commission; members of the Government, secretaries of state or undersecretaries of state and their equivalents; advisers to ministers; judges of the High Court of Cassation and Justice and of the Constitutional Court; the other judges and prosecutors; members of the Superior Council of Magistracy; the president of the Legislative Council and his deputy; The People's Advocate and his deputies; presidential advisers and state advisers within the Presidential Administration; the state advisers of the prime minister; the members and external public auditors of the Court of Accounts of Romania and of the county chambers of accounts; the governor, first vice-governor and vice-governors of the National Bank of Romania; the president and vice-president of the Competition Council; officers, admirals, generals and marshals; police officers; the presidents and vice-presidents of the county councils; the general mayor and vice mayors of Bucharest; the mayors and vice-mayors of the sectors of Bucharest municipality; mayors and vice-mayors of municipalities; county councillors; prefects and sub-prefects; the heads of central and local public authorities and institutions and the persons with control functions within them, with the exception of the heads of public authorities and institutions at the level of cities and communes and the persons with control functions within them; lawyers; commissioners of the Financial Guard; customs staff; the persons who hold management positions, including the director, within the autonomous authorities of national interest, of national companies and societies, of banks and commercial companies in which the state is the majority shareholder, of public institutions that have attributions in the privatization process and of central financial-banking units; the persons provided for in Article 293 and 294 of the Criminal Code.

Also, the National Anticorruption Directorate has jurisdiction over crimes against the financial interests of the European Union, as well as the crimes of misappropriation of public tenders, abuse of office and usurpation of office, if damage greater than the equivalent in RON of 1,000,000 Euros has been caused.

In situations where the competence of the National Anticorruption Directorate is not involved, corruption crimes, as well as crimes assimilated to corruption crimes, are the material competence of the prosecutor's office attached to the court.

In other news, a European Union report revealed that EU countries lost an estimated EUR 140 billion in value added tax (VAT) revenue in 2018 due to transnational fraud. It was estimated that the figures for 2020 could be higher due

to the effects of the COVID-19 pandemic on the EU economy. Member States also reported that around EUR 638 million of EU structural funds were misused in 2015.

In this context, it was decided to establish an international body in order to protect the financing interests of the European Union.

The European Public Prosecutor's Office (EPPO) is an independent body of the European Union, responsible for investigating, prosecuting and prosecuting the perpetrators of crimes against the financial interests of the EU, including: fraud, corruption, money laundering, cross-border VAT fraud. The European Public Prosecutor's Office started its activity on 1 June 2021.

In order to operationalize the European Public Prosecutor's Office, a series of normative acts were adopted, among which we mention: Emergency Ordinance no. 8/2019 regarding some measures for the application of Council Regulation (EU) 2017/1,939 of October 12, 2017 implementing a form of consolidated cooperation regarding the establishment of the European Public Prosecutor's Office (EPPO) and Law no. 6/2021 regarding the establishment of measures for the implementation of Council Regulation (EU) 2017/1.939 of October 12, 2017 on the implementation of a form of consolidated cooperation regarding the establishment of the European Public Prosecutor's Office (EPPO).

## **2. LEGISLATIVE ISSUES IN THE FIGHT AGAINST CORRUPTION**

Although the main international bodies (*the European Commission, the Group of States against Corruption, the Venice Commission*) stated in the reports drawn up in recent years that it is necessary to intensify the anti-corruption fight by ensuring appropriate legislative instruments, the reality in Romania was completely otherwise.

Thus, in the course of 2018, by Decision no. 297/2018, published in the Official Gazette no. 518 of June 25, 2018, the Constitutional Court found that the legislative solution that provides for the interruption of the criminal liability limitation period by fulfilling "any procedural act in question", from the provisions of Article 155 (1) of the Criminal Code, is unconstitutional.

According to Article 31 (3) of Law no. 47/1992 on the organization and functioning of the Constitutional Court, republished, with subsequent amendments and additions, „The provisions of the laws and ordinances in force found to be unconstitutional cease to have legal effects 45 days after the publication of the decision of the Constitutional Court, if, during this interval, the Parliament or the Government, as the case may be, does not reconcile the unconstitutional provisions with the provisions of the Constitution. During this period, the provisions found to be unconstitutional are suspended by law”.

Until May 30, 2022, the legislator did not reconcile the provisions of Article 155 (1) of the Criminal Code in relation to the findings of the Constitutional Court.

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During 2022, by Decision no. 358/2022, published in the Official Gazette no. 565 of June 9, 2022, the Constitutional Court found that the provisions of Article 155 (1) of the Criminal Code are unconstitutional.

In the considerations, the Constitutional Court of Romania held, among other things, that the situation created by the legislator's passivity, following the publication of the mentioned admission decision, represents a violation of the provisions of Article 1 (3) and (5) of the Basic Law, which enshrines the state character of law of the Romanian state, as well as the supremacy of the Constitution. This, because the prevalence of the Constitution over the entire normative system represents the crucial principle of the rule of law. However, the Constitutional Court itself is the guarantor of the supremacy of the Fundamental Law, through the decisions it pronounces, so neglecting the findings and provisions contained in its decisions causes the weakening of the constitutional structure that must characterize the rule of law.

By Emergency Ordinance no. 71/2022 for the amendment of Article 155 (1) of Law no. 286/2009 regarding the Criminal Code, the substantive law criminal norm regarding the interruption of the prescription was modified.

By Decision no. 67/25.10.2002, the High Court of Cassation and Justice, the Panel for resolving some legal issues in criminal matters ruled that the rules related to the interruption of the prescription are rules of material (substantial) criminal law subject from the perspective of their application in time to the principle of activity the criminal law provided for by Article 3 of the Criminal Code, with the exception of more favorable provisions, according to the *mitior lex* principle provided by Article 15 (2) of the Constitution and Article 5 of the Criminal Code.

As a result of the previously mentioned decisions, the National Anticorruption Directorate estimated the closure of a number of 557 criminal cases under criminal investigation and before the courts. In these criminal cases, the estimated damage amounts to 1.2 billion euros, and the total value of bribery and influence peddling amounts to 150 million euros.

At the same time, recently the decision-making chamber adopted the draft laws on the amendment of the Justice Laws (PLX no. 440/2022; no. 441/2022; no. 442/2022). These draft laws concern substantial changes to Law no. 303/2004 regarding the status of judges and prosecutors, Law no. 304/2004 regarding judicial organization, respectively Law no. 317/2004 regarding the Superior Council of the Magistracy.

Within these normative projects are regulated a series of measures with a direct impact on the functioning of the National Anticorruption Directorate. Among them we mention: the increase of the minimum seniority in the position of prosecutor necessary for the appointment within the specialized direction, respectively the limitation of the period in which a prosecutor can be delegated within this specialized structure to a maximum of one year.

According to the data published on the website of the Superior Council of the Magistracy, during September the degree of occupancy of the scheme of prosecutors from the National Anticorruption Directorate was 73%.

In this context, it is estimated that the staffing level of the National Anticorruption Directorate will constantly decrease due to the previously mentioned legislative changes.

## CONCLUSIONS

### ***PROPOSALS TO MAKE THE ANTI-CORRUPTION FIGHT MORE EFFICIENT***

*In order to ensure effective legislative instruments to combat the phenomenon of corruption, we believe that a series of measures should be implemented at the level of national legislation.*

*In these senses, we appreciate that it is necessary to ensure a predictable legislative framework in this matter, in order to avoid the closure of some criminal files.*

*We also appreciate that it is necessary to develop a national strategy/development plan in which a series of concrete measures are foreseen regarding the efficient allocation of human resources to structures specialized in fighting corruption. In this sense, by way of example, we recommend: increasing the personnel scheme of the National Anti-Corruption Directorate, allocating a sufficient number of judicial police officers, facilitating attractive working conditions.*

*At the same time, we appreciate that it is necessary to maintain the current minimum seniority in the position of prosecutor necessary for the appointment to the position of prosecutor within the National Anti-corruption Directorate, in order to ensure the human resources for combating the anti-corruption fight. Last but not least, we believe that it is necessary to eliminate the provisions provided in the draft amendments to the Justice Laws regarding the limitation to one year of the period in which a prosecutor can be delegated within the National Anti-Corruption Directorate. Such a measure is necessary in order to ensure the necessary human resources in order to resolve within a reasonable period of time the criminal files pending before the National Anticorruption Directorate.*

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Law no. 317/2004 regarding the Superior Council of Magistracy;

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Law no. 6/2021 regarding the establishment of measures for the implementation of Council Regulation (EU) 2017/1.939 of October 12, 2017 on the implementation of a form of consolidated cooperation regarding the establishment of the European Public Prosecutor's Office (EPPO);

Emergency Ordinance no. 43/2002 regarding the National Anti-Corruption Directorate, with subsequent amendments and additions;

Emergency Ordinance no. 71/2022 for the amendment of Article 155 (1) of Law no. 286/2009 regarding the Criminal Code;

Government Decision no. 1269/2021 regarding the approval of the National Anti-corruption Strategy 2021 - 2025 and its related documents.