

## Transparency International on progress by Romania

Romania has scored 46/100 in the 2024 Transparency Corruption Perceptions Index (CPI), which is unchanged from 2023. However, just like in other EU countries, Romania's efforts were not enough to prevent the country from dropping to 65<sup>th</sup> out of 180 countries in the overall ranking.

In 2024, Romania continued to combat corruption, despite a reduction in investigations. As far as recent legislative developments are concerned, in late 2024 Romania passed a new law to combat bribery of foreign public officials in international business transactions. This legislation came in light of Romania's

accession process to the OECD and, among other things, it establishes in law the offence of bribery involving foreign officials. Romania's current national five-year anti-corruption strategy is due to elapse this year and discussions have started on the new, renewed anti-corruption national strategy.

Below, we give a very short overview of the main framework governing criminal liability for bribery in Romania and highlight some of the key aspects of national and international importance, including cross-border compliance and investigations considerations.

### 1. Bribery and corruption

Romania has several laws covering bribery offences, such as Law no. 286/2009 (the Romanian Criminal Code), Law no. 78/2000 (for the prevention, detection and sanctioning of corruption offences) and, more recently, Law no. 319/2024 (for combatting bribery of foreign public officials in international business transactions).

The general definition of a bribe is any unlawful sum of money or other undue benefit given in exchange for performing, omitting, speeding up or delaying a specific action. A bribe has no minimum value and there is no distinction between acts of bribery and lawful acts such as hospitality, gifts or travel expenses. What matters is the context in which such benefits are given.

Money, goods or similar valuables received as a bribe are subject to confiscation.

Bribery can be active (e.g. offering, promising, or giving a bribe) or passive (e.g. accepting or soliciting a bribe). Requesting a bribe (explicitly or implicitly) is also punishable. Therefore, all forms of bribery are punishable regardless of the number of intermediaries.

Bribery cases can often involve influencing public officials (in a broad sense), bribery-induced bid rigging in public tenders or trading in influence (bribing third parties to exert influence over public officials).

Both public and private bribery are criminalised. Where a bribery offence is committed in the private sector, the maximum penalty is reduced by a third.

Bribing a foreign official is also a crime under the recently enacted Law no. 319/2024, which subjects companies to higher sanctions than is the case under other forms of bribery provided for in the Romanian Criminal Code.

### 2. Corporate criminal liability (including bribery offences)

In 2004, Romania became the first country in the region to introduce corporate criminal liability. The main provision governing corporate criminal liability is Article 135 of the Romanian Criminal Code, which provides for generally straightforward triggers: *“(1) A legal entity, with the exception of the State and of public authorities, is criminally liable for criminal offences perpetrated in performing their object of activity or in their interest or name. (2) Public institutions are not criminally liable for criminal offences perpetrated in performing an activity which cannot constitute an object of private domain. (3) The criminal liability of a legal entity does not include the criminal liability of an individual who contributed to the perpetration of the same offence”*.

A company cannot avoid criminal liability by changing its legal form, or by way of restructuring or transformation. Therefore, transactions can require especially tailored due diligence.

### 3. Duty to report bribery

The duty to report bribery (reporting duty) is a legal obligation falling on certain individuals, in certain instances and in certain bribery-related contexts. Failure to report bribery is also a crime if certain conditions are met. In practice, then, particular care is needed when considering situations, other possible benefits or implications that could arise for companies, especially in cross-border cases.

Elsewhere, Article 291 of the Romanian Criminal Procedure Code requires that anyone holding a management position within a public authority, public institution or other public legal entity – as well as all persons with supervisory powers – who in exercising their duties learns that an offence has been committed, must immediately notify the prosecuting authorities of the offence and take measures.

#### 4. Legal privilege and cross-border investigations

Confidentiality and attorney-client privilege (legal privilege) is attached to the information and communication shared between an attorney and a client, and to the legal services provided by the attorney to the client, as long as these comply with deontological and ethical standards. Attorneys have an obligation to keep professional secrecy over any aspect of a case entrusted to them, unless provided otherwise by law. Professional documents and paperwork that are in the attorney's custody or are located in the attorney's office are inviolable. Other practical advantages are also gained from legal privilege.

Special considerations apply to companies conducting cross-border investigations. For instance, foreign investigators and foreign in-house counsels do not enjoy legal privilege in Romania, irrespective of their legal qualification or in-house status in their home country (in Romania, in-house lawyers are not granted the same legal privilege and other benefits as external lawyers in an investigation).

#### 5. Whistleblowing

In Romania, as in other EU countries, companies with at least 50 employees must implement a whistleblowing management system for employees to report (potential) breaches in specific areas, including bribery. Among other obligations, they must also appoint an investigator and investigate all reports in a diligent, impartial and independent manner.

The recent implementation of the EU Whistleblowing Directive in Romania has resulted in a rise in whistleblowing activity. This can also carry a risk of triggering a reporting duty on the part of the persons receiving the reports, who are not protected by legal privilege or exempt from the reporting duty. Therefore, how reporting channels are structured is very important.

#### 6. Cooperation with prosecutors

Conducting an internal investigation and being willing to cooperate with the authorities, or even disclosing any misconduct, can arguably be a sign of effective compliance. However, with the exception of certain bribery offences and bribery-related contexts, companies do not derive automatic immunity or any other statutory benefit from voluntary self-reporting or cooperating with the prosecuting authorities. The law does not make direct provision for cooperation between authorities and companies. Therefore, companies must rely on the mutual trust built up between their attorneys and prosecution authorities. In this respect, attorneys' experience from previous successful cases can also be of benefit to new clients and in new cases.

#### 7. Non-trial resolution of bribery cases

In Romania, the only non-trial resolution tool available is a plea agreement, which can be agreed between the defendant and the prosecutor for crimes carrying a penalty of up to 15 years' imprisonment. Therefore, this tool should also be available for bribery offences.

By the same vein, companies can also negotiate a plea agreement with the case prosecutor. Upon conclusion of negotiations, the company must admit that the facts to which it is pleading guilty are accurate and agree to the proposed sanctions. One of the benefits of this tool is that the negotiations may lead to the company being handed down a monetary sanction only and may also secure a more lenient sanction. The plea agreement concluded by the defendant and the case prosecutor must then be confirmed by the criminal court. Our team forms part of several task forces that are proposing to broaden the range of non-trial resolution options. Cross-border aspects can also be important and should be assessed in conjunction with more local concerns.

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