



**PERMANENT MISSION OF ROMANIA**  
to the United Nations Office in Geneva  
and the International Organization in Switzerland

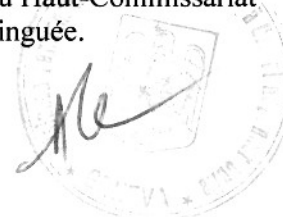
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**No. 2700**

La Représentation Permanente de la Roumanie auprès de l'Office des Nations Unies à Genève et des Organisations Internationales en Suisse présente ses compliments au Haut-Commissariat des Nations Unies aux droits de l'homme et, en se référant à la résolution 29/11 du Conseil des droits de l'homme sur les effets négatifs de la corruption sur la jouissance des droits de l'homme, a l'honneur de lui transmettre la contribution que les autorités roumaines souhaitent fournir à l'égard du questionnaire concernant les meilleures pratiques qui lient les mesures anticorruption et la réalisation et la protection des droits de l'homme.

La Représentation Permanente de la Roumanie auprès de l'Office des Nations Unies à Genève et des Organisations Internationales en Suisse saisit cette occasion pour renouveler au Haut-Commissariat des Nations Unies aux droits de l'homme l'expression de sa considération distinguée.



Genève, le 3 décembre 2015

**Haut-Commissariat des Nations Unies à Genève**

7. Good practices for safeguarding human rights while combating corruption, in particular with regards to:
  - a) the criminalization of corruption (e.g. illicit enrichment) .

According to the UN Convention against Corruption, the corruption undermines democracy and the rule of law, leads to human rights violations, and the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law. Consequently, fighting corruption is by itself a human rights safeguarding practice. In this regard, the new Romanian Criminal Code enforced since the 12 November 2012, in the TITLE V „ Corruption and offenses in public position” foreseen corruption crimes as follow:

- Taking a bribe, which represents the action of the public servant who, directly or indirectly, for themselves or on behalf of others, solicits or receives money or other undue benefits or accepts a promise of money or benefits, in exchange for performing, not performing, speeding up or delaying the performance of an action which falls under purview of their professional duties or with respect to the performance of an action contrary to their professional duties (art. 289 of the Criminal Code)
- Giving a bribe, which represents the promise, the giving or the offering of money or other benefits in the conditions provided under Article 289 of the Criminal Code (art.290 of the Criminal Code)
- Influence peddling, which represents soliciting, receiving or accepting the promise of money or other benefits, directly or indirectly, for oneself or for another, committed by a person who has influence or who alleges that they have influence over a public servant and who promises they will persuade the latter perform, fail to perform, speed up or delay the performance of an act that falls under the latter’s professional duties or to perform an act contrary to such duties (art. 290 of the Criminal Code)
- Buying influence, which represents the promise, the supply or the giving of money or other benefits, for oneself or for another, directly or indirectly, to a person who has influence or who alleges they have influence over a public servant to persuade the latter perform, fail to perform, speed up or delay the performance of an act that falls under the latter’s professional duties or to perform an act contrary to such duties (art. 291 of the Criminal Code)

Moreover, in the Chapter II “Offences in public position” of the Romanian Criminal Code, there are foreseen additional crimes which are considered corruption crimes under the UN convention against corruption. Thus, in the Chapter III of the UN convention against corruption, the embezzlement, misappropriation or other diversion of property by a public official, abuse of functions, illicit enrichment are also considered corruption crimes. In this regard, the Romanian Criminal Code provisions incriminate the above mentioned deeds as follow:

- Embezzlement which represents the acceptance, use or traffic of money, valuables or any other assets managed or administrated by a public servant, on their or on another person’s behalf (art. 295 of the Criminal Code)
- Conflict of interests which represents the conduct of the public servant who, while carrying out their professional duties, committed an act or participated in making a decision that resulted, directly or indirectly, in a material gain for themselves, their spouses, for a relative or an affiliate, including those twice removed, or for another person with whom they were in business or labor relations for the past 5 years or from whom they had or have benefits of any nature (art. 301 of the Criminal Code)

Furthermore, the Romanian legislation criminalized the offences assimilated to the corruption offenses. For example: using in any way, directly or indirectly, of information which is not meant for publicity or allowing the access of the unauthorized persons to this information for the purpose of

obtaining for himself or for another person money, goods or other undue benefits constitutes a crime according to the article 12 b of the Law 78/2000.

b. the detection and investigation of corruption,

In 2002 in Romania it was set up a new anticorruption prosecutors office (at present National Anticorruption Department) which investigates the important corruption crimes. The National Anticorruption Department has competency in investigating the corruption crimes which are foreseen in the Law 78 of 2000 regarding the prevention, detection and punishment of the corruption crimes, as amended.

c. the prosecution and judicial proceedings (including suo motu powers)

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d. in the recovery of illicit assets;

Referring to the illicit assets recovery, an example of effective legal provisions is the “extended confiscation” measure as is foreseen in the Criminal Code. According to the article 112<sup>1</sup> of the Criminal Code, assets are subject to confiscation in case a person is convicted of any of the following offenses, if such offense is likely to procure a material benefit and the penalty provided by law is a term of imprisonment of 4 years or more:

- a) drug and precursor trafficking;
- b) trafficking in and exploitation of vulnerable people;
- c) offenses on the state border of Romania;
- d) money laundering offenses;
- e) offenses related to the laws preventing and fighting pornography;
- f) offenses related to the legislation to combat terrorism;
- g) establishment of an organized crime group;
- h) offenses against property;
- i) failure to observe the law on firearms, ammunition, nuclear materials and explosives;
- j) counterfeiting of currency, stamps or other valuables;
- k) disclosure of economic secrets, unfair competition, violation of the stipulations on import or export operations, embezzlement, violations of the laws on imports and exports, as well of the laws on importing and exporting waste and residues;
- l) gambling offenses;
- m) corruption offenses, offenses assimilated thereto, as well as offenses against the financial interests of the European Union;
- n) tax evasion offenses;
- a) offenses related to customs regulations;
- p) fraud committed through computer systems and electronic payment means;
- q) trafficking in human-origin organs, tissues or cells.

According to the Criminal Code provisions (article 112<sup>1</sup> paragraph 2), the extended confiscation is ordered if the following conditions are cumulatively met:

- a) the value of assets acquired by a convicted person within a time period of five years before and, if necessary, after the time of perpetrating the offense, until the issuance of the indictment, clearly exceeds the revenues obtained lawfully by the convict;
- b) the court is convinced that the relevant assets originate from criminal activities

In enforcing the stipulations of article 112<sup>1</sup> of the Criminal Code, the value of the assets transferred by a convicted person or by one-third party to a family member or to a legal entity over which that convicted person has control shall also be considered.

Moreover, sums of money may also constitute assets under this Article. In determining the difference between the legitimate income and the value of the assets acquired, the value of the assets upon their acquisition and the expenses incurred by the convicted person and their family members shall be considered. If the assets to be seized are not to be found, money and other assets shall be confiscated instead, up to the value thereof. The assets and money obtained from exploiting the assets subject to confiscation as well as the assets produced by such shall be also confiscated. Confiscation shall not exceed the value of assets acquired during the period referred to in paragraph 2 that are above a convicted person's lawfully obtained income.

8. Good practices for the protection of victims, witnesses, reporting persons, anti-corruption activities, whistleblowers and other persons involved in the fight against corruption which explicitly build on human right standards;

a. An example of good practice in relation to the protection of people who report corruption deeds are the articles 290 paragraph 3 and article 292 paragraph 2 of the Criminal Code. According to the article 290 paragraph 3 provisions, the bribe provider shall not be punishable if they report the action prior to the criminal investigation bodies be notified thereupon. Moreover, according to the article 292 paragraph 2 provisions, the perpetrator shall not be punishable if they report the action prior to the criminal investigation bodies be notified thereupon.

b. Another example of good practice are the Ordinance of Emergency 19 of 2002 article 19 provisions. According to the law provisions the person who committed one of the offenses under the National Anticorruption Department jurisdiction, and, during the investigation denounces and facilitates the identification and criminal liability of other persons who have committed such crimes, benefits from reducing by half the limits of the punishment provided by the law.