

ADDITIONAL QUESTIONS

FOLLOWING THE COUNTRY VISIT ON MARCH 10TH, 2025

1. Romania committed to take legislative action in response to the assessment of the OECD that the scope of the offence of foreign bribery in its legislation is too restricted and the sanctions for legal persons too low. The Ministry of Justice prepared draft legislation for consultation in April 2024 and the Government approved it on 18 July 2024. Was it sent and discussed in Parliament?

At the initiative of the Ministry of Justice, the draft law for the transposition of the OECD Convention has been approved by the Government and submitted to the Romanian Parliament. It has been designated as *PL-x nr. 501/2024 - Draft Law on the establishment of measures for the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, adopted in Paris on November 21, 1997.

The legislative process has been completed in Parliament, with the law being promulgated by the President of Romania and published in the Official Gazette no. 1308/December 23, 2024. It has become *Law no. 319/20.12.2024* regarding the establishment of measures for the implementation of the Convention on Combating the Corruption of Foreign Public Officials in International Business Transactions, adopted in Paris on November 21, 1997.

2. What is the status of the draft law to regulate the Ethics and Conduct Rules for members of the Government, other persons occupying public functions in the central public administration and for staff employed in their cabinets? What obligations in Article 47.11 on the Single Register of Transparency of Interests (RUTI) are new?

The draft law amending the Administrative Code, introducing rules of ethics and conduct for third-party entities and individuals (PTEFs), was adopted on March 17th, 2025 by the Senate as the first legislative chamber and has been forwarded to the Chamber of Deputies for further debate.

The legislative process can be followed here: https://www.senat.ro/legis/lista.aspx?nr_cls=L51&an_cls=2025.

Article 47.11 of the draft legislative framework establishes a series of new obligations regarding the transparency of interactions between public officials and third parties, through the implementation of the Single Register of Transparency of Interests (RUTI). Administered by the General Secretariat of the Government as an online public platform, RUTI is designed to ensure transparency in activities that may influence decision-making processes within central public institutions and authorities.

The new obligations include the mandatory registration of certain public officials to publish information about official meetings with third parties at least two days prior to their occurrence. The published data must include the names or titles of participants, the date and location of the meeting, as well as a description of its purpose.

Following the meeting, within a maximum of five working days, the initial information must be supplemented with details regarding the main topics discussed and the conclusions drawn, where applicable. In addition, if such meetings occur without prior scheduling, they must be recorded in RUTI no later than two days after their occurrence.

Officials may also request the registration of third parties in RUTI in order to facilitate their participation in official meetings. Furthermore, the article provides the possibility for dignitaries from autonomous administrative authorities, as well as prefects, sub-prefects, and representatives of local public administration, to voluntarily register in RUTI and disclose their meetings under the same conditions.

Exceptions to the obligation of disclosure are also introduced for specific categories of meetings, including those related to the personal rights of individuals, legal representation in administrative or judicial proceedings, diplomatic relations, union activities concerning employment conditions, and information exempted from public access under applicable law.

3. With the support of the EU's Technical Support Instrument, Romania aims to identify which areas and procedures of public procurement are most prone to corruption by the end of 2024 - the project was nearing finalisation but can you update us more?

With regard to the *Project 23RO06 - Support in Implementing Integrity and Anti-Corruption in the Legal Framework in Romania, including the Reduction of Corruption Risks in Public Procurement, funded through the Technical Support Instrument (TSI)* of the European Commission, three project outputs are nearing completion, adhering to the scheduled project timeline:

Analytical Note on the Dimensions of the Public Procurement System (Result 3)

The Analytical Note is in its final stages of approval at both the OECD and MoJ, after feedback from relevant stakeholders had been incorporated.

The document provides an analysis of Romania's public procurement system from a risk management perspective, with a particular focus on corruption and fraud risks. The key aspects covered include:

- Risk Analysis and Mapping: Assessment of corruption and fraud risks across the entire public procurement cycle, including pre-tendering, tendering, and contract management stages;

- **Stakeholder Mapping:** Identification of key stakeholders involved in the public procurement system (ministries, agencies, contracting authorities, economic operators, and civil society organizations), with a focus on their roles in corruption and fraud risks;
- **Evaluation of Risk Management Strategies and Tools:** Review of existing strategies, tools, and databases for risk management, particularly those aimed at reducing corruption and fraud;
- **Assessment of Institutional Capacities:** Analysis of the essential competencies and tools needed by Romanian authorities (ministries, agencies, and contracting authorities) to mitigate corruption and fraud risks in public procurement.

National Corruption Risk Map in Public Procurement (Result 4)

This risk mapping tool systematically identifies fraud and corruption risks within Romania's public procurement processes.

Current status: The final version of risk map has been finalized by the OECD after integrating feedback from both the public sector and civil society.

The document was developed through close technical collaboration between the Ministry of Justice (MJ) and the National Agency for Public Procurement (ANAP), involving multiple rounds of technical consultations with the OECD.

Structured in a step-by-step manner along the public procurement procedures, the document aims to deliver a clear and comprehensive analysis of identified risks. Its organization includes a detailed methodological description, an overview of relevant risk categories, and tailored solutions and recommendations aligned with Romania's regulatory framework.

The risk map encompasses both general risks applicable to all stages of the procurement process and specific risks identified based on contract typologies or the actors involved. The document provides concrete examples of risk-prone situations, practical solutions for mitigation, and monitoring indicators to support effective risk management.

An example of a risk identified in the Monitoring Contract Performance stage, categorized under Integrity, is the potential conflict of interest or undue influence exerted by individuals responsible for contract monitoring.

This risk may arise due to the need to further strengthen integrity awareness and ethical responsibilities among personnel involved in contract monitoring. If not properly addressed, this could impact the consistency and effectiveness of contract execution.

To mitigate this risk, capacity-building initiatives on integrity can be further developed for contract monitoring personnel. Additionally, reinforcing internal control mechanisms, ensuring clear accountability measures, and enhancing transparency in monitoring activities contribute to strengthening integrity in public procurement.

According to the map conclusions, the responsibility for addressing this risk lies with the Contracting Authority (Procurement Function), internal audit units, and oversight bodies, which must ensure that contract monitoring processes are impartial, well-documented, and aligned with integrity standards. By reinforcing ethical guidelines and oversight mechanisms, the risk of conflicts of interest in contract monitoring can be effectively mitigated, thereby enhancing the credibility and accountability of public procurement.

Similar approaches are applied across all stages of the procurement process, as outlined in the Risk Map, including Needs Analysis, Market Engagement, Market Analysis, Procurement Planning, Preparation of Technical Specifications, Preparation of Tender Documents, Publication of Call for Tenders, Clarification of Tender Documents, Tender Opening, Evaluation of Tender, Contract Award, Contract Signing, Contract Monitoring Performance, Contract Modification, Ordering, and Invoicing-Payment.

Capacity Building and Training on the Risk Map (Result 5)

This component focuses on the practical application of the risk map, ensuring that procurement officials and integrity bodies are equipped to identify, prevent, and mitigate corruption risks.

It includes:

- A training needs assessment to tailor educational programs for public procurement professionals.
- Workshops and training sessions on how to use the risk map effectively.
- Technical assistance in developing a data-driven risk assessment framework, enhancing the ability to detect irregularities in public procurement processes.

Upcoming action: In April 2025, MoJ will organize dedicated training sessions on the risk map, with a training of trainers' component to ensure sustainable knowledge transfer. Experts attending these sessions will be expected to further train procurement professionals across institutions.

Upcoming action: Between 9 and 10th of April 2025, the MoJ and the OECD will organize dedicated training sessions on the risk map, with a training of trainers' component to ensure sustainable knowledge transfer. Experts attending these sessions will be expected to further train procurement professionals across institutions.

The objectives of the following training workshop are:

- To increase the capacity of public procurement officials in Romania in the area of risk management, with a focus on integrity risks.
- To ensure the effective application of the national public procurement risk map developed under the project.

The workshop will be aimed at training the trainers on the following topics based on the training programme:

- The Romanian legal and policy framework for integrity and risk management in public procurement.
- The fundamentals of public procurement risk management.
- The effective application of the national public procurement risk map developed under the project.

Moreover, on the 8th of April 2025, an international conference will be organised by the OECD and the MoJ in order to help disseminate all outputs of the project “Support in implementation of the integrity and anti-corruption framework in Romania, including reducing the risk of corruption in public procurement”.

There will be interactive panel sessions exploring whistle-blower protection, public procurement risk management, and transitions between public and private sector employment. Featuring expert speakers from the Romanian government, international peers and OECD experts, these moderated discussions will offer valuable insights into regulatory frameworks, key challenges, and good practices for each topic. Each session will include an interactive Q&A, encouraging dynamic engagement between speakers and the audience.

<p>4. Can you explain the process and current state of play of the proposal for updating the integrity legislation as submitted by ANI in December 2023 to the Ministry of Justice?</p>

The draft law sent by the National Integrity Agency (ANI) in November 2023 for the implementation of the NI-Act project proposed ***a uniformization of the legal regime for integrity incidents***, which, in the opinion of the Ministry of Justice (MoJ), did not consider the specificity and role of the dignity/position in the institutional architecture of the State.

Moreover, the draft ***proposed an extension of the material and functional competences of ANI***.

The material competence was extended through the ***'requalification/transformation'*** as integrity incidents (incompatibilities, conflicts of interest) of:

- a) the prohibitions concerning the exercise of certain professions or holding specific positions
- b) the certain requirements according to the societal law.

a) The functional competence was extended by transferring to ANI, in disregard of the constitutional and legal framework, the prerogatives of other authorities/institutions.

For example, the repeal of Articles 86(2)¹, 91(4)-(6)², 92, and 99(6) of Law No. 161/2003, along with the introduction of new paragraphs after Articles 86(5) and 95(5) of the same law, would eliminate the competencies of the Prime Minister, the Prefect, and other authority heads, as well as the competencies of Parliament's Chambers in imposing sanctions or dismissing officials due to integrity incidents. Instead, it would grant ANI the power to sanction and dismiss individuals as a result of an integrity incident.

This approach confuses two distinct procedures regarding the determination of incompatibility and the consequences of such a determination. While there appears to be an overlap between ANI's powers and those of the Prime Minister, Prefect, or Parliament, in reality, the latter entities exercise administrative control, local or parliamentary autonomy, through their legally or regulatorily established procedures.

By contrast, under Law No. 176/2010³, ANI, through its evaluation report, and subsequently the competent court ruling on a challenge against this administrative act, may only determine the state of incompatibility but lack competence regarding the termination of the official's position. Additionally, while ANI may refer disciplinary proceedings to the competent authorities based on its findings under Law no. 176/2010, it cannot substitute or assume the responsibilities of those authorities.

b) With regard to the certain requirements according to the societal law - amendments proposed for Government Emergency Ordinance no. 109/2011 (Chapter XV of the draft law), we note that corporate law aspects—such as eligibility conditions for appointment to a corporate position⁴, prohibitions related to the exercise of corporate functions⁵, and issues concerning the relationship between public enterprises and administrators⁶—are erroneously classified in the draft law as incidents of public integrity, specifically as incompatibilities within the meaning of Law no. 161/2003, and are sanctioned accordingly.

However, considering the legislative intent of GEO no. 109/2011, which, as explicitly stated in its preamble, aims to create the legislative and administrative premises to enhance the

¹ The article regulates the establishment and sanctioning of the incompatibility situation of the Prime Minister, minister, state secretary, deputy state secretary, and the functions assimilated to these, as well as for the position of prefect and subprefect.

² The article regulates the determination and effective sanctioning of the incompatibility situation of a local elected official, as well as the legal termination of office in the event of a conflict of interest.

³ Which already establishes the role of ANI, making such a reference within Law no. 161/2003 unnecessary.

⁴ Article 4 of Government Emergency Ordinance no. 109/2011 establishes the eligibility conditions for appointment to the position of administrator or director in public enterprises. Consequently, the appointment of persons expressly provided for by the provisions of Article 4 would constitute an appointment made in violation of the law

⁵ The provisions of Article 7 of Government Emergency Ordinance no. 109/2011 stipulate the prohibition of limiting the number of mandates to ensure the efficiency of the performance/exercise of the administrator's mandate. This prohibition is based on an economic rationale aligned with corporate governance rules.

⁶ Article 12 of Government Emergency Ordinance no. 109/2011.

efficiency of economic operators, we emphasize that the legal regime of the institutions governed by GEO No. 109/2011 must be correlated with the special corporate regime provided by Law No. 31/1990. Consequently, the public integrity regime established by Law No. 161/2003 is not applicable in this context.

Also, it is important to highlight that Law no. 161/2003 regulates and sanctions conflicts of interest as incidents of public integrity, whereas GEO no. 109/2011 governs corporate conflicts of interest, whose legal regime is distinct and results from the correlation of this ordinance with the provisions of Law no. 31/1990.

Accordingly, conflicts of interest within a company or public enterprise (including corporate law sanctions for violations of the provisions of GEO no. 109/2011) are governed by GEO no. 109/2011 in conjunction with Law no. 31/1990 (notably Articles 144³, 144⁴, 150, and 152 of the latter law).

Thus, under these legal provisions, even if certain transactions may imply an interest on the part of an administrator or director, they remain validly concluded under specific conditions, namely with the approval of the General Assembly (article 144⁴ of Law no. 31/1990). Moreover, article 144² of Law no. 31/1990 provides that violations of conflict-of-interest rules attract the patrimonial liability of the administrator, rather than the annulment of the act itself.

Therefore, the new cases of conflict of interest introduced by paragraphs (5) and (6) of Article 15 in the draft law proposed by ANI, as well as the proposed sanctions (automatic termination of the mandate contract or employment contract), contradict the special corporate legal framework, leading to legal instability and interpretative confusion.

In conclusion, corporate law institutions cannot be transformed into public integrity incidents, and as a consequence, the solutions proposed by ANI cannot be adopted.

The functional competence *was extended by ANI taking over*, while disregarding the constitutional and legal competences in force, the ***duties/prerogatives of other authorities/institutions***. For example, by repealing the provisions of article 86 para (2)⁷, article 91 para (4)-(6)⁸, article 92, and article 99 para (6) of *Law no. 161/2003*, and proposing new articles from article 86 para (5), and article 95 para (5), ***the competence of the Prime Minister, the prefect, or other heads of authorities, including the competences of the Chambers of Parliament, is eliminated, as appropriate, and the competence of the ANI to impose sanctions and dismiss from office as a result of the integrity incident is***

⁷ that regulates the determination and sanctioning of the incompatibility situation of the Prime Minister, Minister, State Secretary, Undersecretary of State, and equivalent positions, as well as for the position of Prefect and Subprefect.

⁸ that regulates the determination and effective sanctioning of the incompatibility situation of a local elected official or the determination of the automatic cessation of the position in case of a conflict of interest of the local elected official.

established. The proposed solution, in our opinion, stemmed from ***a confusion between two distinct procedures regarding the determination of the incompatibility status and the effects that such a determination produces.***"

The evaluation and updating of the legislation regarding the integrity framework in the National Recovery and Resilience Plan (NRRP) are elements that appear in the description of Milestone 431, whose objective refers to the *"entry into force of the consolidated laws in the field of integrity"*.

The implementation of Milestone 431 is to be addressed, on one hand, through the evaluation and updating of the legislation managed by ANI (Law no. 161 of April 19, 2003 on certain measures to ensure transparency in the exercise of public offices, public functions, and in the business environment, the prevention and sanctioning of corruption, Law no. 144/2007 on the establishment, organization and functioning of the National Integrity Agency, and Law no. 176/2010 on integrity in the exercise of public functions and offices, amending and supplementing Law no. 144/2007 on the establishment, organization, and functioning of the National Integrity Agency, as well as for the amendment and completion of other normative acts), and, on the other hand, through the development of a codex, according to article 19 of Law no. 24/2000, which should incorporate the legislation on the regime of incompatibilities and conflicts of interest from special legislation.

On March 14th, 2025, discussions were held at the headquarters of the Ministry of Justice between representatives of MoJ and representatives of ANI regarding the subsequent steps in view of drafting and promoting the project related to the aforementioned Milestone.

The representatives of MoJ suggested that the proposed normative act should aim at amending and supplementing the three laws in the field of integrity⁹ and the development of the codex that would integrate all provisions in the legislation regulating integrity incidents. This proposal was accepted by the representatives of ANI.

As a working method, it was suggested that ANI representatives communicate the deficiencies or the issues identified in the three normative acts, the possible solutions for addressing them, and, if necessary, proposed text drafts.

⁹ namely, Law no. 161/2003 on certain measures to ensure transparency in the exercise of public office, public functions and in the business environment, the prevention and sanctioning of corruption; Law no. 144/2007 on the establishment, organization, and functioning of the National Integrity Agency; and Law no. 176/2010 on integrity in the exercise of public functions and offices, for the amendment and completion of Law no. 144/2007 on the establishment, organization, and functioning of the National Integrity Agency, as well as for the amendment and completion of other normative acts.

After the completion and the endorsement of the draft by the leadership of MoJ and ANI, the draft will be sent to the advisory institutions, submitted for approval to the Government, and subsequently submitted for approval to the Parliament.

5. *How is the implementation of the 2021-2025 Anti-Corruption Strategy going?*

The year 2025 marks the conclusion of the implementation phase of the 2021-2025 National Anti-Corruption Strategy (NAS). In the coming period, the NAS Technical Secretariat within the Ministry of Justice will receive institutional contributions regarding the implementation of the dedicated measures outlined in the strategy. The deadline for submission was set for March 15. Subsequently, the Ministry of Justice will consolidate all received data to ensure a comprehensive and well-founded assessment of the progress achieved.

Furthermore, 2025 will witness a large-scale audit exercise of the corruption prevention system. Public sector audit structures will evaluate the implementation of three key measures: whistleblower protection, access to public interest information, and transparency in the decision-making process. The Ministry of Justice, via the NAS Technical Secretariat, will compile institutional audit reports and develop an analytical report to inform future anti-corruption strategies.

Additionally, the Ministry of Justice conducted two rounds of thematic evaluations to analyze the implementation level of anti-corruption measures and identify key challenges faced by public institutions. These assessments targeted both central public administration institutions and their subordinate structures, as well as independent authorities and anti-corruption institutions.

The conclusions of these evaluations contributed to the recalibration of strategic interventions, enhancing the impact of anti-corruption measures and improving interinstitutional cooperation. An important component in the successful implementation of the strategy is the organization of regular information sessions, fostering an open and constructive dialogue. Recently, on February 20, 2025, the Ministry of Justice held an information session with representatives of the Ministry of Environment and its subordinate institutions, attended by approximately 350 participants. This initiative aimed to raise awareness and strengthen proactive partnerships, ensuring that strategic measures are perceived as support instruments rather than additional bureaucratic obligations.

The discussions were customized to include best practices in environmental protection, a sector identified as vulnerable in the 2021-2025 strategic cycle and closely monitored. This example underscores the importance of thematic approaches and integrating operational feedback in the refinement of strategic measures

Development of the New National Anticorruption Strategy

The Ministry of Justice has initiated the preparatory process for the post-2025 National Anti-Corruption Strategy while continuing to monitor the current strategy. The new strategy will be aligned with the upcoming European Union Anti-Corruption Strategy and international evaluation mechanisms to ensure compliance with global standards.

To achieve this, the Ministry has actively participated in the EU Anti-Corruption Network and, since 2024, has engaged in consultations with national stakeholders. This year, formal requests for written opinions, proposals, and suggestions will be made.

Directions we are considering at this moment

In defining the action directions and identifying vulnerable sectors for the next strategic cycle, an essential criterion is *the typology of offenses that have led to indictment decisions*.

The periodic *reports issued by the National Anticorruption Directorate (DNA)* consistently highlight the prevalence of corruption offenses in key areas such as public procurement, regulatory oversight and certification by state authorities, human resources management. These findings will be considered in shaping the future strategic framework, ensuring that anti-corruption measures are targeted towards high-risk sectors and adapted to the latest trends in corruption typologies.

A *comprehensive criminological study* is expected to be developed, building on previous research conducted in 2015 and 2020. This recurring analytical initiative aims to identify and deepen the understanding of the underlying factors contributing to corruption, employing a multidimensional approach based on empirical research methodologies and data analysis. The primary objective is to outline strategic intervention directions, calibrated to address systemic vulnerabilities and specific needs identified through the direct experiences of individuals convicted of corruption offenses.

A new priority in the upcoming strategic document will be enhancing *the active engagement of young people by exploring opportunities for developing a dedicated platform*. This initiative aims to promote education and awareness on corruption-related issues from an early stage of civic and professional development, fostering a culture of integrity and social responsibility.

As a monitoring and evaluation method for the future strategic document, and in line with international trends, *a new mechanism based on quantifiable evaluation indicators for the preventive measures*¹⁰ is likely to be implemented. This model aims to standardize the monitoring process, enhance uniformity in performance assessment, and provide a clearer

¹⁰ Having in mind the indicators developed for monitoring the implementation of Istanbul Anticorruption Action Plan. The Istanbul Anti-corruption Action Plan is the sub-regional peer-review programme for the Anti-Corruption Network (OECD).

picture of the level of anti-corruption measure implementation. The key areas subject to evaluation will include asset declarations, prevention of conflicts of interest, management of integrity incidents and corruption risks, protection of whistleblowers, and other relevant aspects related to institutional transparency and accountability.

The Ministry of Justice has initiated the necessary steps for the procurement of consultancy services for an external audit of the NAS, a target under Romania's National Recovery and Resilience Plan (PNRR). The evaluation will include the actual assessment and the calculation of the strategy's implementation percentage to determine the overall implementation rate.

Conclusion

At this stage, these represent the main strategic directions under consideration, which will subsequently be elaborated into specific measures. Accordingly, the Ministry of Justice is committed to fostering a flexible and targeted partnerships with key institutions to ensure an efficient and inclusive consultation process. This process will be comprehensive, typically extending beyond 6 months, and will encompass both cooperation platform meetings and bilateral consultations with representatives from the public sector, civil society, and the business community.

<p><i>6. The state of play of the measures regarding the draft law on the judicial police - in relation to the Venice Commission's recommendations</i></p>
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The limits of competence, as well as the functional relationships within the criminal investigation activity, are guided by the principles of the Criminal Procedure Code. Thus, according to article 55 para (6) of the Criminal Procedure Code, the criminal investigation bodies of the judicial police and the special criminal investigation bodies carry out their criminal investigation activity under the guidance and supervision of the prosecutor.

In Chapter III - *The Guidance and supervision of the activity of criminal investigation bodies by the prosecutor* (articles 299-304) from the Criminal Procedure Code, the procedural rules regarding the discussed domain are detailed.

At the same time, article 303 para (2), second sentence of the Criminal Procedure Code stipulates that the hierarchical superior bodies of the judicial police or of the special criminal investigation bodies, cannot give instructions or orders regarding the criminal investigation.

Also, article 8 paragraph (3) of Law no. 364/2004 on the organization and functioning of the judicial police, republished, as further amended and supplemented, stipulates that the hierarchical superior bodies of police officers who are part of the judicial police cannot give instructions or orders regarding the criminal investigation, with the prosecutor being the only competent authority in this regard.

By Government Decision no. 436/2022, the Strategy for the Development of the Judicial System 2022-2025 and its associated Action Plan were approved. The aforementioned Strategy proposed a series of measures, exemplifying the following: the digitalization of the Judicial system, the modernization of IT infrastructure, as well as the improvement of the relevant legislative framework.

At the end of 2024, the General Prosecutor's Office attached to the High Court of Cassation and Justice, the Ministry of Internal Affairs and the Ministry of Justice finalized the *Comparative study on the organization of the judicial police in the European Union member states*, developed within the working group established at the level of the Ministry of Justice for the implementation of *Action no. 1.3.2.*, included in the Strategy for the Development of the Judicial System 2022-2025.

The study represents an essential preliminary step for strengthening the judicial police forces. Based on the comparative elements identified, the best working methods from EU member states could be adapted, with best practices to be implemented in the national legislation.

Considering the conclusions drawn from the aforementioned study, *activities are currently underway to exploit/value these conclusions in order to support certain proposals necessary for drafting the law on the judicial police.*

At the time of drafting and promoting the draft law on the judicial police, any proposal or observation collected during the public consultation or interinstitutional consultation will be considered for analysis, and the way it will be integrated into the project will be done in accordance with the principles already established in the criminal procedural law.