Access to Justice in Eastern Europe
ISSN 2663-0575 (Print)
ISSN 2663-0583 (Online)
http://ajee-journal.com

Reform Forum's Note

ARTICLES 7 AND 8 OF THE PROPOSED DIRECTIVE ON COMBATING CORRUPTION AND THEIR APPLICABILITY IN VIEW OF THE ROMANIAN LEGISLATION

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DOI:
https://doi.org/10.33327/AJEE-18-9.1-n000183

Date of submission: 27 Nov 2025
Date of acceptance: 16 Jan 2026
Publication: 06 Feb 2026

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ABSTRACT

Background: *This paper analyses the proposed Directive of the European Parliament and the Council aimed at combating corruption, within the context of Romanian legislation, with special focus placed on the provisions of Articles 7 and 8 of the proposed Directive. Even if this phenomenon still lacks a unanimously accepted definition, corruption remains a pervasive challenge across various sectors in Romania, necessitating a comprehensive legislative framework to strengthen anti-corruption measures and fortify the rule of law. The proposed directive reflects the European Union (EU)'s proactive stance in addressing systemic corruption, with a particular focus on the Romanian legal landscape.*

The research delves into the substantive changes outlined by the proposed provisions of the directive in reference to the phenomenon of bribery, analyzing its potential implications for the existing anti-corruption framework in Romania in view of

the interplay between anti-corruption efforts and the broader legal framework, assessing how the proposed changes may contribute to a more transparent, accountable, and resilient legal system.

Method: *Using a comparative approach, the authors analyze the provisions of Articles 7 and 8 of the proposed Directive in light of the relevant provisions of Romanian criminal law. At the same time, the authors argue that, given the institutional framework of Romanian anti-corruption efforts, the aforementioned regulation does not provide a clear advantage.*

Results and conclusions: *While acknowledging the multifaceted nature of anti-corruption endeavors, the authors conclude that the proposed versions of Articles 7 and 8 of the Anticorruption Directive will not have a significant impact on the corresponding norms of the Romanian Criminal law, while explaining why this could be viewed as both a positive and a negative fact.*

1 INTRODUCTION

In early May 2023, the European Commission introduced to the public an anti-corruption initiative consisting of a joint communication,[1] a new EU Directive on combating corruption,[2] which shall be the focus of this research, and the announcement of a new anti-corruption EU sanctions regulation.

While the Directive openly acknowledges that there is no universally accepted definition of corruption, it uses the decades-old approach to identify which facets of corruption have such a negative impact on society that they warrant criminalization. In this sense, pursuant to Articles 7 to 13 of the Directive, the multiple typologies of acts of corruption may constitute offences. All of these are already criminalized under the provisions of the Romanian Criminal Code of 2014.[3]

If one understands corruption as encompassing the previously mentioned offences, the cumulative costs are staggering: corruption is estimated to cost the European Union hundreds of billions of euros per year. The toll on persons is even higher, as it places them in a position of questioning their commitment to the rule of law, as the 2025 Corruption Eurobarometer Survey demonstrates, finding that over-two thirds of Europeans fear that corruption is widespread. In comparison with 2022, one notices an increase of 1 point.[4]

1 European Commission, 'Joint Communication to the European Parliament, The Council and The European Economic and Social Committee on the Fight Against Corruption' (JOIN (2023) 12 final, 3 May 2023) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52023JC0012> accessed 7 November 2025.

2 Hereinafter also referred to as "the Directive" or "the Anticorruption Directive".

3 Law of Romania No 289/2009 'Criminal Code' (into force 1 February 2014) [2009] Monitorul Oficial 510.

4 European Commission, 'Citizens' Attitudes Towards Corruption in the EU in 2025' (*European Union*, July 2025) <https://europa.eu/eurobarometer/surveys/detail/3361?etrans=sk> accessed 25 January 2026.

That being said, the need to effectively combat corruption stems, in part, from the business sector's view that corruption is a widespread problem in doing business, with 63% of respondents stating that it is .[5]

At the same time, it remains unclear, even in light of the explanations provided by the Directive, how much the private sector, especially the corporate one, contributes to the phenomenon of corruption. The authors would like to highlight that, criminologically speaking, the relationship between corruption, corporations, and State agents, while widely understood as part of the umbrella term "white-collar crime," remains fundamentally misunderstood.[6]

As the Directives of the European Union are considered indirect sources of Romanian Criminal Law,[7] the authors propose a detailed comparative analysis of the provisions of Articles. 7 and 8 of the Directive, which provide the proposed definitions for bribery in the public and private sectors, respectively, in reference to the relevant Romanian similar provisions, to see if the regulations proposed by the European Union will significantly improve or not the anticorruption efforts in Romania, as well as if the implementation of the former provisions will be an easy process or not.

This paper begins with a first section dedicated to a brief introduction to the notion of corruption, as presented by the Anticorruption Directive and as understood in the Romanian legal literature and praxis. The authors also included brief remarks on the role of the European Union in developing and promoting legal instruments that proved crucial to anticorruption efforts across the continent.

The second section was designed to provide the reader with key points of comparison between the definitions of active and passive bribery in the European Directive and their Romanian law counterparts. As this is an introductory paper on the subject, the authors limited the scope of their analysis to a few examples. As shown below, such a comparison should allow the reader to understand whether the implementation process, from this point of view, will be easy or complicated.

This study offers a nuanced understanding of the proposed directive's transformative potential within the Romanian legal context. This research contributes to the ongoing discourse on anti-corruption initiatives, with implications extending beyond Romania to inform broader discussions on the efficacy of anti-corruption directives within the European Union.

5 European Commission, 'Businesses Attitudes Towards Corruption in the EU and in Selected Enlargement Countries' (*European Union*, July 2025) <https://europa.eu/eurobarometer/surveys/detail/3382> accessed 25 January 2026.

6 Graham Brooks, *Criminology of Corruption: Theoretical Approaches* (Palgrave Macmillan 2016) 27-8.

7 Constantin Mitrache and Cristian Mitrache, *Drept Penal Român: Partea Generală* (5th edn, Universul Juridic 2023) 61.

2 OBJECTIVES AND METHODOLOGY

The authors are aware of the breadth of the subject introduced previously and of the spatial constraints inherent to such a paper. Studying national and international efforts to combat corruption may prove to be a task of a lifetime. However, by narrowing the scope of the analysis to only two Articles from the proposed Directive and to only one national criminal legislation, such an endeavor becomes possible and suitable for answering two main questions.

Firstly, if these proposed European norms are necessary in the larger context of corruption. Secondly, if they provide the national legislator and implementing authorities with innovative solutions, they will mark an important step forward in the fight against corruption.

The methods used naturally derive from the aforementioned objectives. Two methods, specific to the comparative approach, will be used primarily: the law-in-context and the functional methods. The context will be introduced first, thereby acknowledging the problems caused by this criminal phenomenon. The analysis will then shift to the functional method, as the authors try to compare how Articles 7 and 8 of the proposed Directive, on the one hand, and Romanian Criminal Law, on the other hand, address these problems.

In the following section, the authors propose a brief introduction to the phenomenon of corruption in the understanding of the European Union.

3 THE PROBLEM OF CORRUPTION

The domain of corruption does not exist in a vacuum, as it is linked to global environmental degradation,[8] international security,[9] policy,[10] funding,[11] waste disposal,[12] biodiversity,[13] global finance[14], and social struggles[15].

8 Muhammad Haseeb and Muhammad Azam, 'Dynamic Nexus Among Tourism, Corruption, Democracy, and Environmental Degradation: A Panel Data Investigation' (2021) 23(4) Environment, Development and Sustainability 5557, doi:10.1007/s10668-020-00832-9.

9 Mark V Vlasic and Jenae N Noell, 'Fighting Corruption to Improve Global Security: An Analysis of International Asset Recovery Systems' (2010) 5(2) Yale Journal of International Affairs 106.

10 Susan Rose-Ackerman and Rory Truex, 'Corruption and Policy Reform' (2012) 444 Yale Law & Economics Research Paper, doi:10.2139/ssrn.2007152.

11 Ilaria De Angelis, Guido De Blasio and Lucia Rizzica, 'Lost in Corruption: Evidence from EU Funding to Southern Italy' (2020) 6 Italian Economic Journal 355, doi:10.1007/s40797-020-00123-2.

12 Berardino Cesi, Alessio D'Amato and Mariangela Zoli, 'Corruption in Environmental Policy: The Case of Waste' (2019) 36(1) Economia Politica 65, doi:10.1007/s40888-017-0087-x.

13 William F Laurance, 'The Perils of Payoff: Corruption as a Threat to Global Biodiversity' (2004) 19(8) Trends in Ecology and Evolution 399, doi:10.1016/j.tree.2004.06.001.

14 Stephen P Ferris, Jan Hanousek and Jiri Tresl, 'Corporate Profitability and the Global Persistance of Corruption' (2021) 66 Journal of Corporate Finance 101855, doi:10.1016/j.jcorpfin.2020.101855.

15 Michael Johnston, 'Fighting Systemic Corruption: Social Foundations for Institutional Reform' (1998) 10 The European Journal of Development Research 85, doi:10.1080/09578819808426703.

Still, there is no denying that despite an advance in the legislation concerning corruption, for example, the 1997 Convention on Fighting Corruption involving officials of the EU or officials of EU Member States,[16] the 2008 Council Decision on a contact-point network against corruption,[17] the 2003 Council Framework Decision on Combating Corruption in the Private Sector, which criminalizes both active and passive bribery[18] and the Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law[19] (the "PIF Directive") it is still necessary to adopt a package of anti-corruption legislation at the EU level for several reasons.

Shortcomings in the anti-corruption efforts at the EU level were observed, and public opinion has been made aware of the need for augmentation through prominent cases such as "Qatargate".[20] In 2022, Eurojust published its first report on corruption, which registered more than 500 corruption cases in six years compared with seventy-eight in 2016, and identified the top five member states involved in corruption cases registered at Eurojust, which are Member States with differences in terms in geographic, population size, social, and economic issues that are considered risks. The countries present in the top five, as ranked by Eurojust using statistics, were Greece, Germany, Romania, Italy, and Spain.[21]

The proposal reflects the shortcomings observed in EU member states, which are present across the entire geographical space of the EU.

First, the basic storyline is to protect society against corrupt elites who have hijacked society to take money out of the pockets of hardworking people and to reward cronies.[22]

Secondly, the need comes from the fact that corruption has a cross-border characteristic, that was already understood by the U.S.A. through the creation of the Foreign Corruption Practices Act (FCPA) in 1977,[23] the OCDE through the 2007 Convention on Combating

16 Convention was Drawn up on the Basis of Article K.3 (2) (c) of the Treaty on European Union on the fight Against Corruption Involving Officials of the European Communities or officials of the Member States of the European Union [1997] OJ C 195/2.

17 Council Decision 2008/852/JHA of 24 October 2008 'On a Contact-Point Network Against Corruption' [2008] OJ L 301/38.

18 Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector, OJ L 192, 31.7.2003, 54, https://eur-lex.europa.eu/eli/dec_framw/2003/568/oj/eng.

19 Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 'on the fight against fraud to the Union's financial interests by means of criminal law' [2017] OJ L 198/29.

20 Sven Hegewald and Dominik Schraff, 'Corruption and Trust in the European Parliament: Quasi-Experimental Evidence from the Qatargate Scandal' (2024) 63(4) European Journal of Political Research 1674, doi:10.1111/1475-6765.12654.

21 Eurojust, *Eurojust Casework on Corruption: 2016-2021 insights* (Criminal justice across borders, Eurojust 2022) doi:10.2812/29787.

22 Zephyr Teachout, 'The Anti-Corruption Principles' (2009) 94 Cornell Law Review 341.

23 Foreign Corrupt Practices Act of 1977 (FCPA) <https://www.justice.gov/criminal/criminal-fraud/foreign-corrupt-practices-act> accessed 7 November 2025.

Bribery of Foreign Public Officials in International Business Transactions[24], and the UN through the United Nations Convention Against Corruption (UNCAC)[25] ratified by Romanian through Law no. 365/2004.[26]

As time went on, though, it became hard to ignore that some of the troubling impulses driving the corruption movement needed to be tackled through an EU cross-border legislative initiative that, once deployed, ought to mobilize a strong EU following, a strong civic participation, to manage and represent a cure for much of the corruption risks that ail our EU community. At this point, knowing that there is this asymmetry between the EU, the USA, and the international community regarding compliance and the fight against corruption, one understands that there is a need to reset the corruption debate in the EU via a piece of legislation that would deliver not only symmetry, but something sturdier, namely, a determination to see the job through. This asymmetry is also present within the EU among Member States.

One of the main premises of this discussion is that the mechanisms of judicial cooperation may only work efficiently if the Member States of the European Union harmonize their criminal law norms. The European Commission indicated that while bribery (both in the public and the private sectors), embezzlement (both in the public and the private sectors), abuse of functions, and obstruction of justice are incriminated in all of the twenty-five States that participated in the study,[27] trading of influence was incriminated in twenty-three States and illicit enrichment was incriminated by only eight States.[28] Therefore, it is implicitly and explicitly acknowledged by the European authorities that a need for a unified definition of corruption exists and should be adopted in the near future.

Moreover, the literature acknowledged that the accession phase of an EU candidate is a great opportunity for the organization to further develop mechanisms for the prevention and management of corruption. This was the case of Romania, the context in which the CVM was developed, which, in turn, provided the necessary framework for developing the Report for all member states.[29]

24 OECD, *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (OECD/LEGAL/0293, OECD 2025).

25 United Nations Convention Against Corruption (adopted 31 October 2003 UNGA Res 58/4) [2007] UNTS 2349/41.

26 Law of Romania No 365/2004 of 15 September 2004 for the Ratification of the United Nations Convention Against Corruption, New York, 31 October 2003 [2004] Monitorul Oficial 903.

27 Bulgaria and Denmark did not respond.

28 Proposal for a Directive of the European Parliament and of the Council on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council (COM/2023/234 final, 3 May 2023) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52023PC0234> accessed 7 November 2025. Hereinafter also *The Proposal for a Directive on combating corruption.*

29 Andi Hoxhaj, *The EU Anti-Corruption Report: A Reflexive Governance Approach* (Routledge 2020) 3.

Thirdly, anti-corruption legislation would be in perfect harmony with a context in which EU interests in public discourse on competitiveness[30] spiked sharply, as it would support an agenda focused on creating the conditions for fair economic competition to guarantee sustainable economic growth. Legislation focused on tackling corruption as a cross-border problem would be conducive to high-minded policy considerations. As stated in the Romanian literature, corruption negatively impacts the efficiency and professionalism of public authorities, especially in the delivery of public-interest services, an aspect that in turn, generates public mistrust in the State's capacity to manage social relations.[31]

Fourthly, the stakes are high, the problems knotty, but it represents a historic opportunity to protect an economic and social model that would help us grow more comfortable with the aim of sustainable growth. Connections that once were opaque can now become more obvious, such as the fact that respecting ethical values, promoting sustainable growth, and allocating public money can contribute to social balance, democratic institutions, and the fight against poverty and organized crime.

Given the importance of the field and the high expectations this Directive must meet, as highlighted in the previous paragraphs, the authors conclude that its implementation should reflect both its innovative character and the previous advances it builds upon. This said, in the following section, the authors will compare the definitions of active and passive bribery used in the European Directive and in Romanian law.

4 ARTICLES 7 AND 8 OF THE DIRECTIVE IN LIGHT OF THE ROMANIAN CRIMINAL LAW

The reality of corruption is predictable only to a certain degree, and to prepare for different aspects of the future, one needs varying degrees of reliability and precision. Yet the coping strategies outlined in the proposed EU Directive constitute only one part of the solution.

Romania has been one of the primary beneficiaries of the Cooperation and Verification Mechanism (CVM); however, it is public knowledge that it faced multiple challenges in demonstrating, in a timely manner, its usefulness to the public and policymakers. Even so, the authors would argue that it played a major role in keeping Romania on the right, European-facing track. Under these circumstances, while the importance of the C.V.M. cannot be overstated when one considers how anticorruption efforts progressed in

30 European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Long-term competitiveness of the EU: Looking Beyond 2030' (COM (2023) 168 final, 16 March 2023) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52023DC0168> accessed 7 November 2025.

31 Teodor Manea, *Drept Penal: Partea Specială: Infracțiuni contra autorității, contra înfăptuirii justiției, de corupție și de serviciu, de fals în înscrisuri, contra siguranței circulației pe drumurile publice, contra familiei* (Hamangiu 2024)160.

Romania, it is rarely cited as a significant instrument in shaping the evolution of the relevant national criminal law provisions. A process that is far from being completed, even if these norms have been improved every year, both by adjustments made by the national legislator and by means of interpretation provided by the High Court of Cassation and Justice. As it was already pointed out in the Romanian literature, these norms are still raising major legal debates in relation to:

- the qualification process of the necessary qualities of the perpetrator of some of the related offences, including passive bribery;
- the legal qualifications of the criminal conduct of those persons who intermediate acts of corruption, including in relation to both active and passive bribery;
- if the legal person may commit acts of passive bribery;
- ascertaining the mental state accompanying the act of corruption.[32]

The authors suggest that such theoretical and practical points of debate prove two things. Firstly, these are problems of nuance, which (mostly) do not hinder or prevent the practical use of these texts. When discovered, bribery, be it passive or active, will not go unpunished, if it can be proved in front of a court of law. However, secondly, these problems may affect the courts' capacity to adopt a unitary approach to cetain forms of bribery, thereby creating discriminatory situations for the perpetrators of corruption. The Romanian definitions of bribery must evolve, or at least their interpretation in relation to specific key issues.

The proposal for a new EU Directive on Combating Corruption introduces fresh perspectives on this danger, and this paper shall focus on provisions in nexus with criminal law.

The authors of the proposals acknowledged from the start that a universally accepted definition does not exist at this point in history.[33] Moreover, if one were to split the phenomenon of corruption into two categories, active corruption and passive corruption, various forms of the latter aren't even incriminated against in multiple countries of the European Union.[34] This is a serious obstacle, as the phenomenon of passive corruption (which includes acts of abuse of office for one's own interest),[35] is often much more discrete than its active counterpart.

This approach is not new and has already been validated in international specialized literature. As one author suggested, even if the traditional manner of defining corruption is being consistently used in relation to the public sector, it is perfectly applicable for the private sector as well.[36]

32 Georgina Bodoroncea, *Corupția: Infracțiuni de corupție. Infracțiuni Asimilate Corupției* (CH Beck 2022) 450.

33 The Proposal for a Directive on combating Corruption (n 28).

34 ibid

35 Brooks (n 6) 28.

36 ibid 19.

The authors believe the novelty of this proposal lies in its grounding in well-supported facts that describe both the social and legislative realities. It would also appear that the efforts of the European Commission to present a unified public discourse on the matter are increasingly more visible, as it has emphasized in a recent study that corruption, as a cross-border problem, develops by taking advantage of a lack of a coherent EU framework.[37]

From this point of view, the definitions provided by Article 2 of the proposed Directive are crucial, as they are primarily responsible for unifying general criminal law norms, without which the definitions of the offences cannot be effective. For example, the notions of public official, legal person, and high-level official, provided by Article 2, parts 3, 7, and 8 of the Directive, are of crucial importance.

These provisions should not be a complete surprise to national legislators, as they reflect a common understanding of the term 'public official.' For example, pursuant to the provisions of Article 175 of the Romanian Criminal Code, the notion of public official has a truly inclusive scope. Most European Members' legislators have adopted a similar approach, as it was necessary to design a much larger scope for the notion of public official for the purposes of criminal law, than for other branches of the law (ex. administrative law), on the one hand because one had to include those public positions usually occupied by politicians (ex. members of the Parliament, ministers, Presidents of the Republic etc.), and on the other hand, because it also had to include those categories of persons who are delegated by the public authorities to wield some form of public authority in the name of the State, while retaining their private status (ex. public notaries or even lawyers in some very specific cases).[38]

One other similarity is that it would appear that, at least pursuant to the corroborative interpretation of the provisions of Articles 3 to 8 of the Directive, a legal person may not be considered an official of any type (public official, trade union official, national official, or high-level official). While the authors acknowledge that this possibility remains a highly debated topic, they would like to highlight that, at this point in history, given the common ground laboriously found by the European Union Member States, it is unnecessary to spark another heated diplomatic contest by stating otherwise. One should remember that Germany adopted the *Verbandssanktionengesetz* only in 2020, and that this was only one step in an otherwise long and very debated normative journey towards the possibility of holding legal persons criminally responsible.[39] The same may be said about Greece and Turkey, for example. Under these circumstances, the Directive will not contradict the

37 Ilia Gaglio and others, *Strengthening The Fight Against Corruption: Assessing the EU Legislative and Policy Framework: Final Report for Acceptance* (Publications Office of the EU 2023) doi:10.2837/22427.

38 Lavinia Valeria Lefterache, 'Art 175 Funcționar Public' in Georgina Bodoroncea and others, *Codul Penal: Comentariu pe Articole* (CH Beck 2014) 365.

39 Andra-Roxana Trandafir, *Răspunderea Penală a Persoanei Juridice* (CH Beck 2023) 32.

philosophy of the Romanian in-effect Criminal Code, as it does not challenge what is already understood as the perpetrator of passive bribery in this national legal system.

All this being said, one has to acknowledge that a "*transcontinental*" set of norms in this domain has to be designed in such a way as to provide a list of offences, defined in such a manner as to allow the EU Member States to make the necessary legal adjustments without major social and cultural reforms.

While it would be extremely interesting to compare all the definitions provided by Articles 7 to 13 of the Directive with their in-effect Romanian counterparts, the spatial limits of this paper would not allow for it. Therefore, in the following paragraphs, the authors would like to explore the notion of bribery.

The definition of active bribery, pursuant to Article 7 (a) of the Anticorruption Directive, should not raise any legal debate when compared to the Romanian definition of active bribery, the latter came into effect in 2014, being included among the provisions of Article 290 of the Romanian Criminal Code. [40]

Defining passive bribery as the European legislator wants to do, pursuant to Article 7 (b) of the Anticorruption Directive does not conflict with the normative solution adopted by the Romanian legislator in 2014 when the provisions of Article 289 of the Romanian Criminal Code came into effect.

However, it should be noted that the European definitions, pursuant to Articles 7 (a) and (b) of the Anticorruption Directive, use the expression "to act or refrain from acting in accordance with his duty or in the exercise of that official's functions". The Romanian legislator chose a more detailed approach to incrimination, stipulating that the public official (in Romanian, functionarul public) must comit the illicit act in specific contexts, and providing clear examples of typologies.

On the subject of active or passive bribery in the public sector, given what is presented above, the Anticorruption Directive does not conflict with the preexisting definitions of bribery in the Romanian Criminal Law. However, if one considers the previously indicated national debates, which remain active in relation to the Romanian relevant definition, the authorsmust conclude that the Directive does not represent a step forward, as it does not appear to provide any answers. One could argue that the implementation process would rekindle these questions, making the process of harmonizing European national norms in this field even more difficult.

As for the notion of bribery in the private sector, the European authors of the draft used the same dual approach, splitting the definition into two, one for active bribery and one for passive bribery. However, when comparing the definitions proposed by Article 7, with those proposed by Article 8 of the European Directive, two main differences appear. Firstly, as

40 Law of Romania No 289/2009 (n 3).

expected, Article 8 does not use the term 'public official'. While it is completely understandable why the European text seeks to establish a framework within which a specific offence may be committed, one may legitimately ask whether this enumeration of categories is the best solution, as none of these four types of activities has a legal autonomous definition within the meaning of the Anticorruption Directive.

It is quite easy to derive their meanings by referencing other EU normative acts; the mere act of referencing creates an opportunity for practitioners, especially defense attorneys, to interpret them narrowly, in accordance with their clients' interests. Such a praxis is not only expected but also desired especially if one accepts that the process of interpreting the law is fundamentally a creative process that directly influences the evolution of the substantive norms.[41]

As shown below, Romanian criminal law does not introduce such a limitation, opting for broader incrimination in the context of private sector-related bribery.

One could notice, under these circumstances, that the Anticorruption Directive does not explain how to include the phenomenon of bribery, whether active or passive, when such acts are committed by agents of national or international NGOs.

There are many cases in which an NGO volunteer or employee may take a bribe to refrain from acting in accordance with their duty, regardless of whether the activity is economic, financial, business, or commercial.

The second main difference is that Article 8 stipulates that the illicit conduct must occur while the perpetrator acts "in any capacity directing or working for a private-sector entity" and must mean that they "act or refrain from acting, in breach of that person's duties". For comparison, Article 308, paragraph 1 of the Romanian Criminal Code stipulates that one may commit active or passive bribery (in reference to Articles 289 and 290 of the same act) when one acts in any manner in the interest of any private entity. In the Romanian literature, such a perpetrator is included in the category of "private servants."

Taking both differences into account, it is clear that the phrasing and terminology used in Article 8 of the Anticorruption Directive may require some Member States, such as Romania, to limit the scope of their national norms. Such a limitation would not occur because of the imperative character of the norms of the Anticorruption Directive, nor because of how the subsidiarity rules function, but because the Member States, in the process of uniformization of the anticorruption criminal norms adopted throughout the European Union, might feel obligated to adapt their national texts of incrimination to a common denominator.

41 Cristina Tomulet, *Interpretarea în Dreptul Penal* (Universul Juridic 2023) 94.

Having a common European legislation is most certainly an important step forward; one should consider that such a limitation might, arguably, hinder anticorruption efforts in States where they are still needed.

However, one should also consider these texts from the perspective of their practical usefulness. It should be noted that the proposal is directly in line with facts with which practitioners are familiar. This was necessary to predict which instruments were required.

The instruments arising from the discussion on the new EU Directive on combating corruption include measures to prevent corruption, specialized bodies, and the provision of the necessary resources to competent authorities. The emergence of a knowledge-based perspective on the construction of an EU directive meant to combat corruption is implied , as time has shown that the legislator can learn from the experience of an authority that investigates corruption offenses. A corruption offense is not impervious to analysis once the facts are discovered through an efficient investigation that has used proper legislative and policy instruments.

Therefore, the authors would like to acknowledge the benefits of creating specific obligations for the Member States, pursuant to the provisions of Articles 4, 5, and 6 of the Directive. However, one could argue that implementing said norms will be difficult in those States that lack specialized authorities in this field.

The National Anticorruption Directorate is a Romanian body specialized in the repression of corruption, known not only to the Romanian public but also to the EU public, and is one of the most important resources to consider when approaching any analysis of this topic. The authors consider the proposal to establish specialized bodies for prevention and combating corruption as an efficient instrument. Romania's experience is valuable because such an organization exists, namely the National Anticorruption Directorate. Within this institution, it has been established that prosecutors' priority is to conduct criminal investigations into all offenses within their jurisdiction. It is noteworthy that the special competence of the National Anticorruption Directorate is strictly determined by corruption offenses, offenses related to corruption offenses, and offenses assimilated to corruption offenses. The focus is on categories of offenses related to active and passive corruption, as well as corruption in public or private law. The territorial competence is a national one. The National Anticorruption Directorate covers the entire country. Due to this attribute, it may be considered a central body for criminal investigations. The competence to investigate offenses committed in Romanian territory is established on the basis several successively-appreciated criteria, pursuant to Article 8 of the 2014 Criminal Code.

Given the fact that Romania invested both national and European funds to train, equip and man the National Anticorruption Directorate, as well as other similar institutions (like the General Anticorruption Direction, which is a part of the Ministry of Internal Affairs), the authors would argue that, given the time and resources, implementing the higher standard required by the Directive should not prove to be a difficult process.

5 CONCLUSIONS

The proposed Directive reflects the European Union (EU)'s proactive stance in addressing systemic corruption, with a particular focus on the Romanian legal landscape. As was clearly stated, legislative efforts must be made continuously to address corruption efficiently and in a timely manner, a problem that evolves and shifts focus continuously alongside European culture and society.

It could be argued that the proposal for an EU directive on combating corruption takes this reality into account and represents the latest stage of the European effort to build a comprehensive instrument. As previously indicated, there is a specific need for a definition that unifies the various understandings of corruption proposed by the Member States.

However, from a functional point of view, without reiterating the main ideas of the previous section, the authors would like to highlight the fact that the proposed versions of Articles 7 and 8 of the Anticorruption Directive will not have any significant impact on the corresponding norms of the Romanian Criminal Law.

This could be a positive aspect, as one might conclude that the Romanian definitions of active and passive bribery are already as modern and efficient as they need to be.

However, the Romanian definitions of these two offences are not perfect and continue to raise issues in the praxis of the Romanian courts, while also sparking theoretical debates in the specialized literature. Moreover, one could argue that, given the fact that the Romanian texts came into effect in 2014 and undergone only minor adjustments since then, the definitions proposed by the Directive almost a decade later should constitute a significant update, especially if one takes into accountArticles 7 and 8 of the Directive are the product of the collective knowledge of the relevant public authorities from all the European Union Member States. Viewed from this angle, the fact that it could be easily implemented in Romania is unfortunate, as this 'easiness' stems from the lack of solutions to the aforementioned problems, and from their presence.

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Competing interests: No competing interests were disclosed.

Disclaimer: The authors declares that their opinions and views expressed in this manuscript are free of any impact of any organizations.

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EDITORS

ABOUT THIS ARTICLE

Cite this article
Constantinescu-Mărunțel C and Manea-Săbău T, 'Articles 7 and 8 of the Proposed Directive on Combating Corruption and Their Applicability in View of the Romanian Legislation' (2026) 9(1) Access to Justice in Eastern Europe 422-38 <https://doi.org/10.33327/AJEE-18-9.1-n000183>

DOI: https://doi.org/10.33327/AJEE-18-9.1-n000183

***Keywords*:** *Romanian anti-corruption efforts, anti-corruption directive, Eastern-European legislation, harmonization, approximation of laws, euro-crime, rule of law.*

DETAILS FOR PUBLICATION

Date of submission: 27 Nov 2025
Date of acceptance: 16 Jan 2026
Publication: 06 Feb 2026
Was the manuscript fast tracked? - No
Number of reviewer reports submitted in first round: 2 reports
Number of revision rounds: 1 round with minor revisions

Technical tools were used in the editorial process

Plagiarism checks - Turnitin from iThenticate
https://www.turnitin.com/products/ithenticate/
Scholastica for Peer Review
https://scholasticahq.com/law-reviews

AI DISCLOSURE STATEMENT

The authors confirm that no artificial intelligence tools or services were used at any stage of writing, translating, editing, or analyzing content for this manuscript.

АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Обговорення реформи у галузі

СТАТТІ 7 ТА 8 ПРОПОНОВАНОЇ ДИРЕКТИВИ ПРО БОРОТЬБУ З КОРУПЦІЄЮ ТА ЇХ ЗАСТОСОВУВАННЯ З ОГЛЯДУ НА ЗАКОНОДАВСТВО РУМУНІЇ

Каталін Константінеску-Марунцел* та Теодор Манеа-Сабау

АНОТАЦІЯ

Вступ. *У цій статті аналізується запропонована Директива Європейського Парламенту та Ради, спрямована на боротьбу з корупцією, у контексті законодавства Румунії, з особливою увагою до положень статей 7 та 8 запропонованої Директиви. Незважаючи на*

те, що це явище досі не має одностайно прийнятого визначення, корупція залишається поширеною проблемою в різних секторах Румунії, що вимагає створення комплексної законодавчої бази для посилення антикорупційних заходів та зміцнення верховенства права. Запропонована Директива відображає проактивну позицію Європейського Союзу (ЄС) у боротьбі з системною корупцією, з наголосом на правовому полі Румунії. Дослідження присвячене суттєвим змінам, що окреслені запропонованими положеннями Директиви щодо явища хабарництва. У статті було проведено аналіз потенційних наслідків для наявної антикорупційної системи в Румунії з огляду на взаємодію між антикорупційними заходами та ширшою правовою основою, а також здійснено оцінку того, як запропоновані зміни можуть сприяти створенню більш прозорої, підзвітної та стійкої правової системи.

Методи. *Використовуючи порівняльний підхід, автори аналізують положення статей 7 та 8 запропонованої Директиви у світлі відповідних положень румунського кримінального законодавства. Водночас автори стверджують, що, з огляду на інституційну основу антикорупційних заходів Румунії, вищезгадане регулювання не забезпечує чіткої переваги.*

Результати та висновки. *Визнаючи багатогранний характер антикорупційних заходів, автори роблять висновок, що запропоновані версії статей 7 та 8 Антикорупційної директиви не матимуть суттєвого впливу на відповідні норми румунського кримінального законодавства, пояснюючи, чому це можна розглядати як позитивний, так і негативний факт.*

Ключові слова. *Антикорупційні заходи в Румунії, антикорупційна директива, східноєвропейське законодавство, гармонізація, наближення законів, єврозлочинність, верховенство права.*