

A CONCEPTUAL ANALYSIS OF FRAUD AND CORRUPTION IN THE PUBLIC SECTOR

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ABSTRACT: *This paper explores the connection between corruption and usurpation aspirations. The article demonstrates that corruption continues to permeate all levels of the political and socio-economic system. The study reveals strong evidence that apart from the traditional factor of corruption – it is also a driver for fraud. In short, our analysis draws attention to the fact that the phenomena of corruption and fraud in society are placed at the center of public opinion, daily either through the press, radio or television, from the Parliament's rostrum and other sources, various facts of a criminal nature regarding fraud and corruption in Romanian society in which representatives of state authorities, political parties and officials of various ranks are involved. It is obvious that the appearance and development of these phenomena has destabilized Romania over time. It is also very true that in the analysis and evaluation of these phenomena, sometimes rhetorical notions are used, inaccurate or exaggerated statements are made. However, there are important differences between the phenomena of fraud and corruption in the legal sense and their perception by public opinion.*

Keywords: public procurement, fraud, corruption, prevention, avoidance, authorities, economic operators, recommendations, ethical conduct

JEL CLASSIFICATION: K 34

1. Introduction

One of the sectors most affected by the phenomena of fraud and corruption is the public sector, with all the negative influence derived throughout society. In order to evaluate the main models of fraud, a clear distinction must be made between irregularities and the phenomenon of fraud because cases of fraud are difficult to detect and the existing estimates related to this phenomenon do not reflect reality, the extent of the problem being almost certainly underestimated and in the absence of adequate data with regarding these phenomena, combating them is much more difficult to prevent.

The advantages of developing strategies to combat the phenomena of fraud and corruption at the national level consist in ensuring an effective and efficient protection in the use of the state's financial interests. The main benefits are:

- Interconnectivity between budget expenditures and revenues;
- Improving the prevention, detection and combating of fraud and corruption phenomena;
- Ensuring a legal framework for the recovery of improperly spent public funds;

- Establishing a more efficient framework.

Causes of corruption and fraud in the spending of public financial resources

At EU level, fraud and corruption are perceived as a threat to the security and financial interests of the Union and are a priority at EU level both for the efficient use of taxpayers' money and for the fight against organised crime and terrorism, which are rooted in corruption, providing the framework for the development of these categories of crime.

Corruption fundamentally undermines good governance, weakens public systems and violates human rights, and disrupts progress towards the goals set at member country level. Governments, development partners and researchers in different fields are promoting various strategies in the fight against corruption to control corruption in public systems around the world. However, existing research does not provide a comprehensive picture of how these efforts align.

Corruption is defined as the abuse of power used for private gain achieved through the misappropriation of resources transferred from federal/national level municipal bank accounts, the claiming of purchases that never took place, the valuation of goods and services at above market value, and public procurement irregularities marked by illegal bidding in any respect (such as the awarding of the contract to the firm of a family member). The UN Convention against Corruption (UNCAC), specifies that signatory countries must criminalise specific forms of corruption, including bribery of national and foreign public officials, embezzlement of funds, misappropriation of property by public officials, trading in influence, abuse of office and illicit enrichment. Although internationally agreed standards have been set by various treaties, compliance by countries varies according to country and context. The legal framework underpinning the fight against EU fraud and other illegal activities affecting the interests of the Union is, whereby Member States make it a priority to protect the EU budget from potential frauds developed as a result of the corrupt system.

At EU level, the European Anti-Fraud Office (OLAF) carries out the following activities:

- carry out independent administrative investigations in order to identify fraud, corruption and any other illegal activity involving non-reimbursable external funds, to ensure that European taxpayers' money is invested in projects that contribute to the creation of new jobs as well as to the promotion of economic growth in Europe;
- investigating cases of serious misconduct by European Union staff as well as members of EU institutions, contributing to strengthening public trust in the institutions;
- the elaboration of European Union policies regarding combating fraud with European funds.

In accordance with Regulation 2017/1939 (<https://eur-lex.europa.eu/eli/reg/2017/1939/oj?locale=ro>) the establishment of the European Public Prosecutor's Office will represent the EU body with powers in carrying out criminal investigations and prosecution cases of fraud and corruption affecting the EU's financial interests.

The European Commission, through the Directorate-General for Migration and Internal Affairs (DG HOME), addresses the issue of corruption at European and international level.

Corruption creates uncertainty in the business environment, reduces the level of investment and prevents the smooth functioning of the single market. In particular, it undermines trust in governments, public institutions and democracy in general.

The institutions of the European Union aim to:

- rationalization and modernization of legal norms with an impact on corruption;
- monitoring the progress made related to the fight against corruption in EU countries;
- supporting the implementation of national anti-corruption measures through financing, technical assistance and exchange of experience.

3. Literature review

Regardless of the field, the specialized literature is visibly enriched from one day to the next. For example, a search for the terms "fraud, corruption" in Web of Science generated 843 articles (articles in ISI journals and ISI indexed conference volumes), of which: 71 articles in the period 1993-2008, 183 documents in the period 2009-2013, 321 documents in the period 2014-2019, and in the period 2020-2023 the number of documents is already 268, the most being published in the year 2022: 11.032%, i.e. 93 scientific articles.

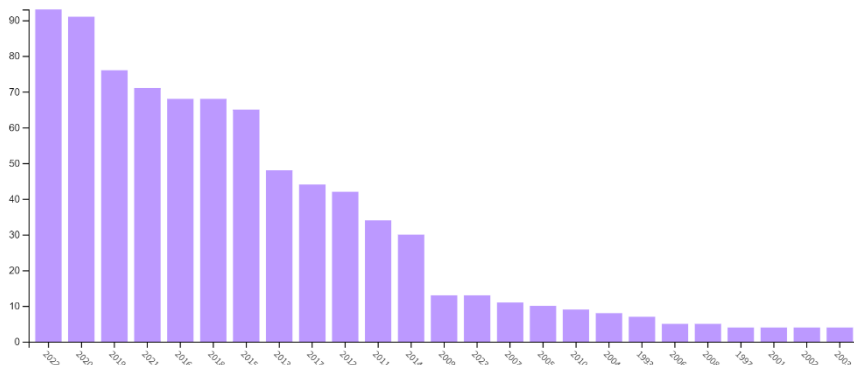


Figure 1: Results from the Web of Science Core Collection for: "fraud, corruption" (all domains) by year of publication

Source: Web of Science Core Collection

According to the Web of Science publication category, of the 843 scientific articles, most are published in journals in the fields of criminology and law (29.893%, i.e. 252 articles), followed by economics and business (25.504% - 215 articles), finance and management (20.522% - 173 articles), political science and public administration (17.548% - 147 articles), ethics (4.982% - 42 articles).

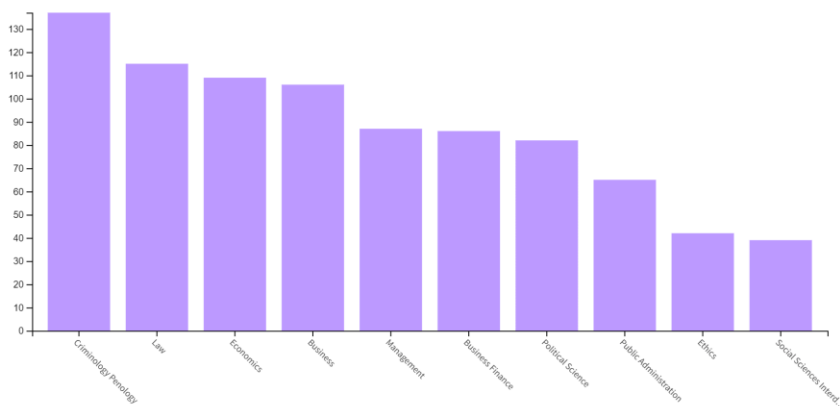


Figure 2: Results from the Web of Science Core Collection for: "fraud, corruption" (all domains) by publication category
Source: Web of Science Core Collection

Depending on the country/region of Web of Science publication, most scientific articles on the topic of fraud and corruption are published by researchers from the USA (25.386%, i.e. 214 articles), followed by a long distance from England (12.1% - 102 article), Australia (4.508% - 38 documents), Germany (4.508% - 38 articles), Romania occupying the 7th place in the top of publications, only 3.677% - 31 documents.

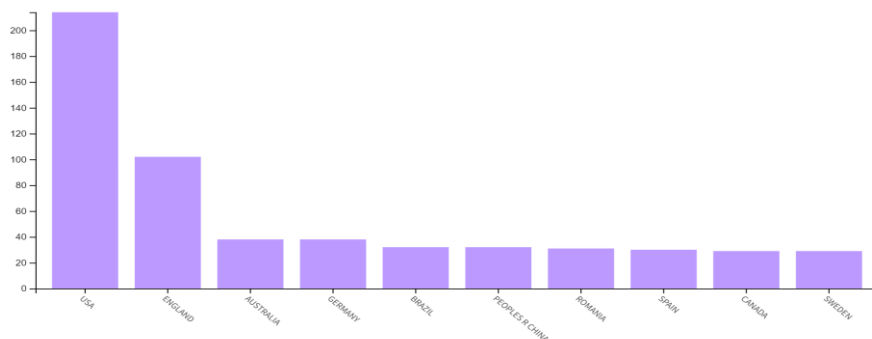


Figure 3: Results from the Web of Science Core Collection for: "fraud, corruption" (all domains) by country/region of publication
Source: Web of Science Core Collection

The VOSviewer program, version 1.6.19, which is a software tool for building and viewing bibliometric networks, was used for data analysis. In the first phase, the analysis of the co-occurrence term was carried out for the analyzed sample, applying limitation no. of keyword occurrences at 18. The main findings that can be deduced from the visualization map of the correlation network between the keywords indicate that 21 items were recorded, grouped into 5 clusters, which generated 149

connections, with a power total links of 864. The keywords grouped in the 5 resulting clusters are symbolized in different colors for each cluster, as follows: behavior, business, culture, ethics, impact, management, organizations (cluster 1 - red), responsibility, governance, governance corporate, performance, trust (cluster 2 - green), bribery, corruption, crime, law, money laundering (cluster 3-blue), fraud, elections (cluster 4-mustard yellow), public procurement (cluster 5-purple).

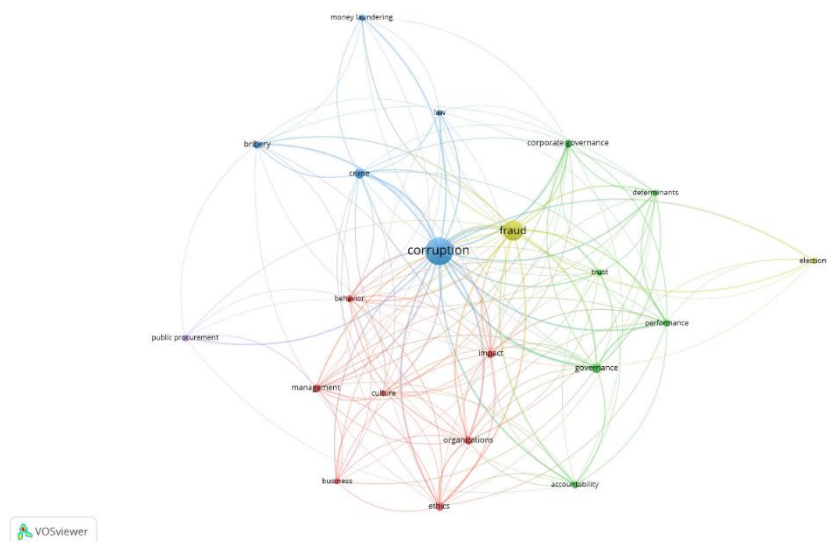


Figure 4: Network visualization map based on text data – keyword co-occurrence
Source: VOSviewer, version 1.6.19

The spread of fraud and corruption is one of the main social problems and an obstacle to the implementation of reforms in Romania, posing an undeniable threat to national security.

The phenomena of corruption and fraud threaten on the one hand the security of the state as a result of the spread within local public authorities through the combination of political influence and business. These phenomena develop as a result of the disregard and violation of public rules and laws by officials and others, as a result of the influence of personal interests at the expense of national interests and as a result of the ineffectiveness of internal and external policies in the fight against corruption.

4. Determinant Factors of Corruption and Fraud in the public sector

The main determinants of corruption and fraud and the extent to which they spread are mainly generated by:

1. *Political factors*, through the politicization of central/local public administration, lack of decision-making and financial transparency, poor implementation of organizational policies and communication gaps:

- excessive freedom given to the decision-maker by restricting responsibilities up the hierarchy;
- poor political accountability;

- group interests;
 - influence peddling in the media;
2. *Legislative factors* characterized by insufficient and inconsistent regulations and legislative framework mainly due to the following elements:
- legislative gaps, interpretable and subjective legislation, confusing legislative regulations;
 - unstable and interpretable legislation on preventing and combating corruption and fraud;
 - lenient legislative framework;
3. *Institutional factors* that are reflected in the inefficient organization of public institutions through the implementation of poor management, cumbersome and/or difficult to implement and inefficient working procedures, which are generated as a result of:
- Extreme politicization of public institutions;
 - Promotion of untrained and unprofessional (sometimes incompetent) individuals who have close direct and/or indirect links with the political environment and are implicitly obedient to the political environment, a political affiliation which is often a condition for the promotion of these individuals to management positions.
 - Organizational structures tailored to interests, generally political interests;
 - The deliberate implementation of inefficient and cumbersome control systems by groups temporarily in power in order to create chaos and to make it difficult or impossible to identify irregularities and/or deviations from legality and compliance;
 - The implementation of European and international anti-corruption instruments at the whim and/or in the interest of personal group interests which are contrary to the national interest, as well as the undemocratic and non-transparent amendment of anti-fraud/anti-corruption legislation through government ordinances;
 - Perfection in the commission of fraud and corruption, so that, with a will against anti-corruption, the practical application of criminal legislation and the fight against fraud and corruption becomes an extremely difficult and unsuccessful challenge for the competent authorities;
4. *Social factors* through the creation of conflictual, tense and discriminatory situations within public institutions, mainly caused by:
- The economic and social environment of education and development of the individual;
 - Natural and geographical factors affecting the individual's natural environment;
 - Lack of equal opportunities and discrimination within public administrations;
 - Favoritism, clientelism and nepotism in public administrations;
- In consideration of individual criminogenic factors, long ago Plato stated that "*human greed is the source of corruption and this erodes the moral values of the collectivity*"

and its common goals", and in our times Caiden notes that: "greed, as a cause of corruption, arises when persons of a negative character rise to positions of power", and Warren to appreciate that "in seeking to satisfy their greed, corrupt individuals or groups cause the exclusion of social groups from decision-making processes that directly affect them, resulting in a deficit of democracy".

5. *Educational factors* characterized by a poorly developed and deficient educational environment and a lack of professional ethics, the main defining elements of which are the following:

- Lack of early specific education leading to knowledge of the causes and effects of corruption, the existing risks as well as the forms of prevention;
- Deficient and corrupt educational system that implicitly demonstrates and develops forms of corruption from the very beginning of school, which inevitably leads to the formation of future germs of corruption;

6. *Behavioral/human factors* materialized by a lack of moral and professional conduct, namely:

- Promotion of individuals with criminal records, with anti-social orientations, who very easily pursue and identify various opportunities for committing acts and deeds oriented towards illicit profit, promoting the idea and co-opting followers;
- Inefficiency of vocational training systems;
- Promotion of individuals with corrupt characteristics and inclinations and political affiliations at the expense of professional, honest and fair officials;

7. *Financial factors*, i.e. salary grievances and lack of material incentives in conjunction with rising inflation. Thus, due to limited material possibilities and the desire for material wealth and social comfort, illegal activities are carried out, the effects of corruption being extremely numerous and found both at national and transnational level, generating serious phenomena in the environment:

- Economic - inefficiency in tax collection, reduction of investments especially in infrastructure, increase in inflation, etc.
- Social - lower living standards, lack of confidence in public institutions and in the act of government, poor quality of healthcare, etc.
- Institutional - inefficiency in the management of public funds,
- Protection of EU financial interests - by decreasing absorption of non-reimbursable European funds, consequences of the development of fraud and corruption;
- Political - decrease in confidence in participation in elections, considerable decrease in democratic values, etc.

5. Forms and mechanisms of corruption and fraud in the use of public financial resources

Infringements of the law lead to administrative and criminal sanctions which are regulated by national legislation. In EU Member States there are specialized services for the investigation and/or prosecution of possible cases of fraud affecting the EU's financial interests (e.g. DLAF in Romania: Department for the Fight against Fraud). National anti-fraud strategy:

- imposes regulations on the effective and efficient use of EU financial interests

- ensures cooperative links between budgetary expenditure and revenue;
- refers to the possibilities for funding from the EU budget;
- adds value in terms of preventing, detecting and combating illegality and fraud;
- imposes strict measures to recover unduly spent funds from European Union budget;
- develops methods to prevent and combat fraud, corruption and other illegal activities affecting the Union's financial interests;
- impose proportionate penalties in accordance with the relevant legislation;
- develops recommendations or actions to improve administrative capacity;
- imposes methods as regards transparency in the process of protecting the EU's financial interests;
- develops new methods of access to information for the general public given that the National Anti-Fraud Strategy is a public document;
- helps to develop the national legal framework and an update and renewal of cooperation agreements;
- strengthens cooperation with OLAF and the competent EU institutions, EU Member States and other countries.

The classification of the main forms of corruption and fraud as part of the offences covered by national legislation are as follows:

- **Bribery** or passive corruption defined as the act committed intentionally by a public official directly or through a third party for advantages of any kind, for himself or for someone else, or the acceptance of a promise to this effect, in order to perform or not to perform, in violation of his duties as a public official, an act in accordance with his duties or in the exercise of his office, an act provided for in Article 289 of the new Criminal Code.
- **Bribery** or active corruption defined as the act committed with intent, by any person, of promising, offering or granting, directly or through a third party, an advantage of any kind, for oneself or for a third party, to a public official, in order to perform or refrain from performing, in violation of his public duties, an act in accordance with his duties or in the exercise of his office, an act provided for in Article 290 of the new Criminal Code.
- **Influence peddling** is defined as the request, receipt or acceptance of the promise of money or other benefits, directly or indirectly, for oneself or for another person, committed by a person who has influence or gives the impression of having influence over a public official and who promises to induce the latter to perform, not to perform, to accelerate or to delay the performance of an act falling within his or her official duties or to perform an act contrary to these

duties, an offence provided for in Article 291 of the new Criminal Code.

- **Buying influence** is defined as requesting, offering or giving money or other benefits, for oneself or for another person, directly or indirectly, to a person who has influence or gives the impression of having influence over a public official, in order to induce the latter to perform, not to perform, to speed up or to delay the performance of an act falling within his or her official duties or to perform an act contrary to those duties, an offence provided for in Article 292 of the new Criminal Code.
- **Use of office to favor persons**, defined as the act of a public official who, in the exercise of his/her duties, has performed an act by which a pecuniary benefit has been obtained for himself/herself, his/her spouse, a relative or a relative up to and including the second degree, with the exceptions provided by law in Article 301, paragraph (1) of the new Penal Code.
- **Acts committed by or in connection with members of arbitration tribunals** (in relation to the offences of taking and giving bribes) the provisions of Articles 289 and 290 of the Criminal Code also apply to persons who, on the basis of an arbitration agreement, are called upon to give a ruling on a dispute submitted to them for settlement by the parties to this agreement, regardless of whether the arbitration proceedings are conducted under Romanian law or under another law, an offence provided for in Article 293 of the new Criminal Code.
- **Corruption and service offences committed by other persons**, the provisions of Articles 289-292, 295, 297-300 and Article 304 of the new Penal Code relating to public officials shall also apply accordingly to acts committed by or in connection with persons who perform, permanently or temporarily, with or without remuneration, a task of any kind in the service of a natural person referred to in Article 175, paragraph 1, of the new Penal Code. (2) or within any legal person Å Article 308 of the new Penal Code.
- **Acts committed by or in connection with foreign officials**, corruption offences under Chap. I of the new Penal Code shall apply in respect of the following persons, unless otherwise provided by international treaties to which Romania is a party:
 - a) civil servants or persons working on the basis of an employment contract or other persons performing similar duties in a public international organization to which Romania is a party;
 - b) members of parliamentary assemblies of international organizations to which Romania is a party;
 - c) civil servants or persons working on the basis of an employment contract or other persons exercising similar functions within the European Union;
 - d) persons exercising legal functions in international courts whose jurisdiction is accepted by Romania, as well as officials of the registry of such courts;
 - e) officials of a foreign State;

- f) members of parliamentary or administrative assemblies of a foreign State;
- g) jurors of foreign courts, Article 294 of the new Penal Code.

Classification of forms of corruption according to their extent:

- Individual corruption, also called petty corruption, is characterized by the incorrect application of the law and most often takes the form of bribery, influence peddling or abuse of power;
- Corruption in accordance with the law or functional corruption, which does not involve breaking the law but incorrect interpretation of it;
- Bribery against the law or dysfunctional corruption characterized by the demand for money or other material benefits by the individual holding public office in order to favor certain advantages to undeserving persons who would not normally benefit under the law;
- Widespread corruption, which can be observed particularly in organizations where corrupt practices are flourishing;
- Grand corruption or widespread corruption at the political level and is defining both in the capacity held by the perpetrators who are usually political leaders, parliamentarians, governors and others and in the enormous amount of damage;
- The concept of "state capture" - manifested by influencing the decision-making process (usually at the highest level) or the legislative process in order to obtain benefits (privatization is a prime example);

Depending on its implications, corruption can be: - *low*; - *medium*; - *high*.

Small" corruption is manifested at the level of the institutions by public officials who, in the exercise of their duties, receive undue advantage even though they are legally remunerated for their work. In general, petty corruption consists of obtaining information on factors involved in making decisions, rushing through authorizations, accepting incomplete documents in order to create advantages, etc.

Medium" corruption is characteristic of higher level functions and refers to the interpretation of the law for one's own benefit and interest, or in other words the exercise of powers in violation of the law or at the limits of the law associated with fraud, embezzlement, etc.

High" corruption is characterized by the involvement of dignitaries in the drafting of legislation in their own interest, which would seem to lead to a certainty of the legality of the illegalities committed by both dignitaries and persons in their service.

Depending on the nature of the corruption, this includes:

- abuse of power in the exercise of official duties;
- fraud;
- favoritism;
- use of illicit funds to finance political parties;
- the subjective orientation of public procurement decisions;
- abuse of power in the field of privatization;
- conflict of interest.

Depending on the areas in which it manifests itself, corruption can be administrative, economic and political.

Administrative corruption occurs in the work of local and central public administration, health and social assistance, education and culture, justice, defence and public order, national security, etc.

Economic corruption is characterized by abuses and irregularities in the financial-banking, agricultural, industrial, commercial, etc. sectors.

Political corruption refers to the abuse of power manifested through parliamentary and political party activity, the negative influence of legislative initiatives according to the interests of criminal groups that finance political parties and electoral campaigns in order to obtain legislative advantages, etc.

Depending on the nature of criminal activities at European level, corruption can take the following forms:

- smuggling of cigarettes manufactured abroad;
- tax evasion;
- money laundering;
- credit card forgery;
- illegal sale of alcohol;
- environmental crime or waste trafficking;
- fraudulent money transfers by electronic means;
- misappropriation and misuse of subsidies.
- different categories of trafficking such as arms, nuclear materials, drugs or human beings;

The mechanisms of corruption are generally analyzed under three hypotheses:

- misappropriation of budget funds for personal gain;
- political corruption;
- the selection of government employees on subjective criteria.

The *misappropriation of budgetary funds for personal gain*, a form of corruption which can manifest itself as follows: the main authorizing officer, who may be a minister or mayor, proposes the breakdown of budgetary expenditure by chapter (autonomous regions, state-owned companies, subordinate public institutions), the public institution concludes contractual relations with the economic operator specializing in carrying out certain works (execution, concession works imposed by the head of the administration who in turn concludes sub-contracting contracts with natural or legal persons in certain areas of activity.

Political corruption, exemplified by controls on institutions triggered through the bodies with control attributions and in case of identification of irregularities the head of the institution under control asks the political leader on the party line for support, who intervenes at the head of the institution with control attributions to determine the employees under control to renounce the irregularities found, which implicitly ensures the head of the institution with control attributions to keep his position or even his promotion.

The selection of employees in the administration on subjective criteria, a form of corruption which manifests itself both in the 'buying' of bosses and in the appointment of people as a result of favoritism, seduction, harassment of individuals, etc.

According to the legislation in force, fraud means any intentional act or omission relating to the submission of false/fictitious, incomplete or incorrect statements and/or documents, the non-disclosure of information through the breach of

obligations which has the effect and is carried out with the purpose of misappropriating funds.

The categories of economic offences punishable under the criminal code (<https://lege5.ro/gratuit/gezdmnrzgi/cuprins-codul-penal?dp=gqytsojshe4do>) are:

- **Embezzlement** is defined as misappropriation of assets under management on the basis of official duties, use or trafficking by an official, for his own benefit or for the benefit of another, of money, valuables or other assets which he manages or administers, an offence provided for in Article 295 of the new Criminal Code.
- **Tax evasion** is defined as the concealment of the taxable object, the understatement of the taxable amount or the use of other means to evade all or part of the payment of taxes and duties, of income and assets acquired which are subject to taxation.
- **Money laundering** is defined as:
 - the transfer of property or the exchange of property knowing it to be derived from the commission of a criminal offence in order to conceal the source of the property or to assist the person who committed the offence to evade prosecution, trial or execution of sentence;
 - concealing the true source or ownership of property or rights therein, knowing that the property or assets result from the commission of a crime;
 - obtaining, using or possessing property knowing that it is the proceeds of crime.
 - **Deceit** is defined as misleading a person by presenting a falsehood or a falsehood as true in order to obtain for oneself or for another person an unjust pecuniary benefit, an offence provided for and punished by Article 244 of the new Penal Code.

In addition to the offences expressly mentioned in the new Criminal Code or other special laws, there are other offences which may fall within the scope of offences against the financial interests of the European Union in Romania, such as corruption offences, service offences, etc.

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