



## Attempts to Weaken Romania's Anti-Corruption Law: Implications for Internal and European Policy

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*On 29 January, the third cabinet of Romania's ruling coalition of the Social Democratic Party (PSD) and the Alliance of Liberals and Democrats (ALDE) was established. Prime Minister Viorică Dănciula's intention is to weaken the country's anti-corruption laws. These changes are criticised by the U.S. and in the European Union as undermining the rule of law in Romania. This may strengthen EU supporters of the idea to connect structural fund payments to adherence to the rule of law.*

The coalition's priority is to amend the laws so certain politicians involved in corruption scandals will not be punished. In early 2017, attempts to weaken the anti-corruption laws and declare an amnesty by urgent government decree caused mass public protest, resistance from President Klaus Iohannis (descended from the National Liberation Party; PNL), and criticism from the European Commission (EC), some EU countries and the U.S. administration. Under this pressure, the government withdrew the decrees. The coalition decided then to amend the laws in the regular manner and seemed willing to appease protesters and foreign partners.<sup>1</sup>

**Change of Government.** Liviu Dragnea, the president of PSD and the Speaker of the Chamber of Deputies, predominantly influences the government's actions. In just the one year of the PSD-ALDE coalition, he has twice forced a change of prime minister when they tried to become independent: Sorin Grindeanu in June 2017 and Mihai Tudose in January 2018. Dragnea cannot become prime minister since he is serving a suspended sentence for falsifying a referendum in 2012 when he was president of the Teleorman County Council. Now, his other trial for abuse of power is coming to an end, and if convicted, his earlier penalty could be restored.

Prime Minister Dăncilă had been a PSD deputy in the European Parliament since 2009. She supports the changes to the anti-corruption laws and is politically connected with Dragnea. Together with him and many of his associates, she comes from the Teleorman party structures. In the government, 13 ministers were exchanged, with the new positions a reward for loyal regional activists of PSD. This should motivate the party structures to be more active the protests lasting since December 2017 should re-intensify.

**Another Attempt to Change the Laws.** The goal of the coalition is to subordinate the judiciary, especially the prosecutor's office, to the government. That is why in December it voted to amend bills on the status of judges and prosecutors, the organisation of judicial institutions, and the Supreme Judicial Council. The changes would exclude the president of Romania from the procedure of appointing the general prosecutor and the heads of specialised prosecutor's offices: the Directorate for Investigating Organised Crime and Terrorism (DIICOT) and the National Anticorruption Directorate (DNA). This is especially aimed against the head of the DNA, Laura Codruța Kövesi, who is recognised in the EU for the prosecution of politicians involved in corruption scandals. Meanwhile, the DNA is accused by the coalition of politicising investigations and falsifying evidence, and they want Kövesi to resign.

<sup>1</sup> J. Pieńkowski, "Romanians Protest Changes in Anti-Corruption Law," *PISM Bulletin*, no. 25 (965), 9 March 2017, [www.pism.pl](http://www.pism.pl).

The opposition and the president may extend the legislative procedure, but they cannot block it. At PNL's request, the Constitutional Court recognised some of the bills' provisions as unconstitutional, including permission for judges and prosecutors to run companies or exercise political functions, classification of some investigation materials as public information, and an imprecise definition of a judge's mistake. The court sent the bills back to parliament for amendments. The president of Romania does not have an absolute veto. He can only ask parliament to re-enact the laws and then ask the Court to assess their constitutionality.

In a parliamentary commission, the coalition is working on amendments to criminal code and criminal procedure code. They would limit the liability for abuse of power, including corruption crimes, because most of them have met this legal qualification. The final shape of the amendment is not known yet, but the proposals filed by PSD include a €200,000 minimum in damages to justify prosecution, narrowing the statute of limitations in these cases to three years and notification of the police or prosecutor within six months of the suspected crime, and that anyone sentenced to imprisonment for less than three years, seriously ill, or at least 60 years old would be kept under house arrest.

The coalition presents the changes to the laws as a struggle against a "parallel state." According to its politicians, the country's secret services remain beyond democratic control, and the corruption scandals including coalition politicians are just provocations by the Romanian Intelligence Service (SRI) and DNA, which they claim are Iohannis supporters. That is why Dăncila announced she would not apply to SRI for counterintelligence clearance of the new ministers. In addition, together with Dragnea and Călin Popescu-Tăriceanu, the Speaker of the Senate and the leader of the ALDE, she resigned from personal protection from the Protection and Guard Service (SPP). They justified it by Dragnea's unproven accusation of SPP's involvement in a plot to remove him from his post in PSD. These actions by the coalition may indicate it is preparing to amend the national security bill to transfer the power of the president to the government and parliament to nominate the chiefs of services and to control their activities. Thus, it would neutralise the services in the DNA and DIICOT investigations.

**U.S. and EU Reactions.** The changes are justified by the coalition as the implementation of European norms on the presumption of innocence and execution of sentences. For violating these norms, Romania has been repeatedly punished by the European Court of Human Rights. Meanwhile, EU institutions, some Member States and the U.S. recognise the changes as a threat to the rule of law and the fight against corruption. This is confirmed by the U.S. State Department appeal sent in October to the Romanian parliament to not introduce the controversial changes. In response, Dragnea and Popescu-Tăriceanu accused the U.S. of a lack of confidence in an ally state, which has bought a U.S. Patriot system for \$4 billion.

In December, the ambassadors of Belgium, Denmark, Finland, France, Germany, the Netherlands, and Sweden, in a joint statement, asked Romania to submit the changes to the Venice Commission for review. In addition, in January 2018, EC President Jean-Claude Juncker and EC Vice-President Frans Timmermans issued a letter warning that the basis of a strong Romania in the EU must be the undisputed independence of the judiciary and the ability to fight against corruption. In response, the coalition leaders accused the EC of being unfamiliar with the situation and blamed the EC Delegation in Bucharest for alleged disinformation.

On the other hand, President Iohannis supports the involvement of the EU institutions to block the changes to Romanian law. He warns the government the changes could result in the launch of the EU's Article 7 TEU procedure against Romania for violations of EU rules by a Member State. In addition, after Iohannis' Brussels meeting on 31 January with Juncker, he warned that the changes lower the prospects of Romania's membership of the Schengen area and risk the closure of the Cooperation and Verification Mechanism (MCV), which had been expected to happen before the end of 2019.

**Conclusions.** The proposed changes in Romanian law are clearly intended to paralyse institutions fighting corruption and allow politicians involved in it to avoid responsibility. Although these actions are criticised by the U.S., the EC, and some EU Member States, the pressure on the coalition is too weak to abandon its intentions, especially if Dragnea, who controls the government, is determined to achieve them. However, the intensification of public protests after the expected amendments of criminal law, combined with the suggestions of foreign partners, could lead the coalition to withdraw the most threatening changes to the rule of law in the country.

To press Romania further, the EC is using standard legal procedures and other tools, such as the prospect of not closing the MCV and not allowing membership of Schengen. In addition, the Romanian legislative process is ongoing, and modifications of the bills are possible. This precludes the launch of Article 7 against Romania. However, the changes to Romania's anticorruption laws may be an additional argument for the EC's proposal presented in February 2018 connecting European funds to respect of the rule of law by Member States. Romania's joining Poland and Hungary in conflicts with EU institutions could increase the probability of maintaining this proposal on the EU agenda. Although for the moment it has been openly supported only by the Netherlands, actions like those in Romania give another argument to countries wanting to connect these issues during negotiations of the next multi-annual financial framework.