

November 15, 2018

To: Mister **Călin Popescu-Tăriceanu**
President of the Senate

Mister **Liviu Dragnea**
President of the Chamber of Deputies

Mister **Nicușor Halici**
President of the Legal, Disciplinary and Immunity Committee of the Chamber of Deputies

Mister **Robert Cazanciuc**
President of the Senate's Legal, Appointment, Discipline, Immunities and Validation Committee

Mister **Florin Iordache**
President of the Commission for Systematization, Unification and Ensuring Legislative Stability in the Field of Justice

SUBJECT: Impact of amendments of Criminal Code and Criminal Procedure Code on the business environment

Dear Sirs,

Following the analysis of the draft legislation, including proposed amendments to the Criminal Code and the Criminal Procedure Code, we believe that once enacted they will have negative effects on the business environment, especially taking into consideration the abuses and weakening of the sanctioning mechanism regarding civil servants, with whom each professional interacts in their work.

The amendments are likely to generate distrust of the Romanian State's ability to ensure the legality, stability and predictability of business relationships and the business environment in general, but also to protect the interests of companies and citizens operating in a transparent, correct, professional manner, with rigorous observance of legal provisions and undertaken commitments.

At the same time, the adopted amendments may expose many companies to a risk of insolvency, as many of those under the capacity of injured parties in criminal cases who claim damages may not recover substantial losses especially caused by the corruption

offences or offences at work. Although there is the possibility of civil action in court, we believe that this action only makes it more difficult to recover damages, imposing consistent costs on the injured person.

We believe that the above mentioned can lead to the stagnation of Romania's economic development and to a decrease in the interest that investors have or might have for Romania.

Specific issues

As far as the amendments to the Criminal Code are concerned, we point out below the main changes with a direct negative impact on the business environment:

- **Amendment of Art. 17 Criminal Code** - in the new form, crimes committed through omission are decriminalized when there is a contractual obligation to act; the offence exists only when the obligation to act results from the law and not from the contract. For example, in a contract in which one party is the State, although contractual non-execution (inaction/omission) may take the form of abuse of office, the public officer cannot be held liable because the obligation is contractual only; in fact, the possibility for the injured party to file criminal complaints based on the abusive act of a civil servant, based on the non-fulfilment of an act consisting of an omission, liability based on a contractual obligation, is eliminated.
- **Repeal of Art. 175 par. (2) Criminal Code** - The category of assimilated public officers is eliminated, totally unjustifiably restricting the outline of persons who, while performing services of public interest (notaries, judicial experts, bailiffs, bankers, doctors in the public health system, etc.) under certain conditions may no longer be the subject of corruption and service crimes, such as bribery, influence peddling, peculation, abuse of service, etc.
- In certain situations, these professional categories may play a determining role in the management of public money or funds from the general budget of the European Union; therefore, to the extent that contractors/companies intending to access sources of funding/co-financing from such funds for various investment projects would discover potential corruption and/or service offences (eg bribery, peculation, etc.) committed, for example, by bank officials, would no longer have opened the way for criminal complaints against them.
- **Amendment of Art. 291 par. (1) Criminal Code** - The content of influence peddling is modified, accepting that the offence does not exist if non-material benefits are obtained. The change also makes the existence of influence peddling subject to the promise of trafficking in influence followed by the intervention of a civil servant. The fact that the offence depends by the actual public servant restricts considerably the evidence used to prove the offence.

- **Amendment of Art. 297 par. (1) Criminal Code** - The crime of abuse of service is redefined, a redefinition that greatly restricts the scope. For example, a civil servant violating the law and providing an undue material benefit to grandchildren, cousins, concubines, or other people can no longer be held responsible for the crime of abuse of service.
- We believe that the notion of "material benefits" should still include non-patrimonial benefits (eg promotion in office), the more so as they are at least as common as the material benefits in Romanian criminal practice.

Reducing the way in which the offence was committed to actions of claiming/accepting/accepting the promise of only *material* benefits could have a negative impact in the sense that private companies cannot prove the possibility of allegations of influence peddling in which only non-patrimonial benefits were granted.

We attach to this letter a document that punctually presents some of the main changes to the Criminal Code and the Criminal Procedure Code with effect on the Romanian business environment.

Finally, we express our full willingness to dialogue and participate in the discussions on this subject for an analysis in all perspectives of the changes adopted and their impact on society, both at the citizen level and at the macro level. At the same time, the business environment supports legislative initiatives that aim to contribute constructively to the reduction of social risks in Romania and is open to participate in debates and meetings that contribute to the improvement of the criminal system.

A copy of the letter will also be sent to the President of Romania, the Prime Minister, the Minister of Justice, the Minister for Business Environment, Commerce and Entrepreneurship, the presidents of all parliamentary parties and the members of the legal committees of the Senate and the Chamber of Deputies.

With consideration,

Board of Directors of the Foreign Investors Council
By Franz Weiler
Chairman