

Law on preventing, discovering and sanctioning of corruption acts

(Entered into force on: May 18th, 2000)

It must be specified that the only text which shall produce legal effects is the Romanian text.

Chapter I General Provisions

Art. 1 - The present law institutes measures for preventing, discovering and sanctioning of corruption acts and applies to the following persons:

- a) who exercise a public position, irrespective of the way in which they were invested, within public authorities or public institutions;
- b) who fulfil, permanently or temporarily, according to law, a position or a task, to the extent to which they participate in decisions-making process, or they can influence the decisions, within public services, autonomous regies, trading companies, national companies, national societies, cooperative units or other economic agents;
- c) who carry out control attributions according to the law;
- d) who grant specialized assistance to the units stipulated in letter a) and b), to the extent to which they participate in the decisions-making process or can influence the decisions;
- e) who, irrespective of their position, achieve, control or grant specialized assistance, to the extent to which they participate in the decision-making process or can influence the decisions, with regard to operations that involve capital circulation, banking operations, hard currency exchange or credit operations, investment operations in stock exchanges, in insurance, in mutual investment or regarding the bank accounts or those assimilated to them, domestic and international transactions;
- f) who have a management position in a political party or formation, in a trade union, in an employer's organization or in a non-profit society or foundation;
- g) other natural persons than those stipulated in letters a) - f), under the terms stipulated by law.

Chapter II Special Rules of Conduct for Certain Categories of Persons, for the Purpose of Preventing Corruption Acts

Art. 2 - The persons provided in art. 1 are compelled to carry on the duties that are incumbent on them in exercising their functions, duties or tasks assigned to them, by strictly observing the laws and the rules of professional conduct, and to ensure the protection and the carrying out of the legitimate rights and interests of the citizens, without using their positions, duties or tasks received, for obtaining for them or for

other persons of money, goods or other undue advantages.

Art. 3 - (1) The persons provided in art. 1 letter a), as well as those that hold a management position, from directors included, and up, within the autonomous regies, national companies, national societies, trading companies in which the state or an authority of the local public administration is a shareholder, the public institutions involved in the carrying out of the privatization process, the National Bank of Romania, the banks in which the state is controlling stockholder, have the obligation to declare their assets under the terms of the Law no. 115/1996 on declaring and control of the assets of the dignitaries, magistrates, civil servants and of certain persons with management positions.

(2) The non-submitting of the declaration of assets by the persons provided in paragraph (1) brings about the ex officio opening of the control procedure of the assets under the terms of the Law no. 115/1996.

Art. 4 - (1) The persons provided in art. 1 let. a) and c) are obliged to declare, within 30 days from receipt, any direct or indirect donation or physical gifts received in connection with the exercising of their functions or duties, with the exception of those that have a symbolic value.

(2) The provisions of the Law no. 115/1996 referring to the modality of submitting the declaration of assets applies accordingly also in the case provided in paragraph (1).

Chapter III Offences

Section 1 Categories of offences

Art. 5 - (1) In the meaning of the present law, corruption offences are those offences provided in art. 254 - 257 from the Criminal Code, in art. 61 and 82 from the present law, as well as offences stipulated in special laws, as specific modalities of the offences provided in art. 254 - 257 of the Criminal Code, and in art. 61 and 82 from the present law.

(2) In the meaning of the present law, offences assimilated to the corruption offences are the offences, provided in art. 10 - 13.

(3) The provisions of the present law are applicable also the offences provided in art. 17, which are in direct connection with the corruption offences or with those assimilated to such offences.

(4)The provisions of the present law are applicable also to the offences against financial interests of the European Communities provided in art. 181 - 185, through whose sanctioning is ensured the protection of the funds and resources of the European Communities.

Section 2 Corruption offences

Art. 6 - The offences of taking bribe - provided in art. 254 from the Penal Code, of

giving bribe - provided in art. 255 in the Penal Code, of receiving undue advantages - provided in art. 256 in the Penal Code and of trading influence - provided in art. 257 from the Criminal Code, are punished according to those texts of law.

Art. 61 (1) Promising, offering or giving money, gifts and other benefits, directly or indirectly, to a person who has influence or induces the believe that has influence over an official, in order to determine that specific official to do or not to do an activity that is in its competences is punished with imprisonment from 2 to 10 years.

(2) The perpetrator is not punished if he/she denounces to authorities the deed before the criminal investigation body is notified for that specific deed.

(3) Money, assets or any other goods that made the object of the offence described at para. 1 are confiscated, and if not found, the convict is obliged to pay their equivalent in money.

(4) Money, assets or any other goods are remitted to the person that gave them in the terms of para. 2.

Art. 7 - (1) The fact of taking bribe, provided in art. 254 from the Criminal Code, if committed by a person who, according to law, has duties of ascertaining or sanctioning the contraventions or of ascertaining, investigation or judging of offences, are sanctioned with the punishment provided in art. 254 paragraph 2 from the Criminal Code regarding the commission of the offence by an official with control duties.

(2) The deed of giving bribe performed towards one of the persons provided in paragraph (1) or towards an official with control duties is sanctioned with the punishment provided in art. 255 from the Criminal Code, the maximum of which is increased by 2 years.

(3) If the offences provided in art. 256 and 257 from the Criminal Code, and the offences provided in art. 61 and 82 from the present law are committed by one of the persons mentioned in paragraph (1) and (2), the special maximum limit of the punishment of which shall be increased by 2 years.

Art. 8 - The provisions of art. 254 - 257 from the Penal Code and art. 61 and 82 from the present law also apply to the managers, directors, administrators and censors or other persons with control attributions of trading companies, national companies and societies, autonomous regies and to any other economic agents.

Art. 81 - Provisions of art. 254-257 from the Criminal Code and of art. 61 and 82 from the present law are also applied to the following categories as well:

a) officials, contractual personnel or other persons which have similar attributions within international public organisations in which Romania is part;

b) members of parliamentary assemblies of the international organizations to which Romania is part;

c) officials, contractual personnel or other persons which have similar attributions within the European Communities.

d) persons that exercise judiciary attributions in international courts with competence accepted by Romania, as well as clerks working for such courts;

e) officials of foreign state;

f) members of parliamentary or administrative assemblies of foreign state.

Art. 82 Promising, the offering or giving money, or other benefits, directly or indirectly to an official representing a foreign state or a public international organisation in order to determine that specific official to do or not to do an activity that is in its competences, with the purpose of obtaining an undue advantage within international economic operations, is punished with imprisonment from one to 7 years.

Art. 9 - In the case of the offences provided in the present section, if committed in the interest of a criminal organization, association or group or of one of their members or to influence the negotiations of international commercial transactions or the international exchanges or investments, the maximum of the punishment provided by law for such offences shall be increased by 5 years.

Section 3 Offences assimilated to corruption offences

Art. 10 - The following deeds shall be punished by imprisonment from 5 to 15 years and the interdiction of certain rights, if committed for the purpose of obtaining for himself or for other person, money, goods or other undue advantages:

a) the establishing, deliberately, of a diminished value, compared to the real market value, of the goods belonging to the economic agents in which the state or an authority of the local public administration is a shareholder, committed during the privatization activity, forced execution, judiciary reorganization or liquidation or on the occasion of a commercial transaction, or of the goods belonging to public authorities or public institutions, during a selling activity forced execution of these, committed by those holding management, ruling or having administration, forced execution, judiciary reorganization or liquidation attributions;

b) the granting of credits or subsidies by infringing the law or the crediting rules, non-following up, according to law or the crediting rules, of the contracted destinations of the credits or subsidies, or non-following up of the remaining credits;

c) the utilization of the credits or subsidies for other purposes than those for which they had been granted.

Art. 11 - (1) The deed of a person who, by virtue of his position, of the duty or of the task received, has the obligation to supervise, to control or to liquidate a private economic agent, to carry out for it any task, to mediate or facilitate the carrying on of certain commercial or financial operations by the private economic agent or to

participate with capital to such economic agent, if the deed is of such nature as to bring him directly or indirectly undue advantages, shall be punished by imprisonment from 2 to 7 years.

(2) If the deed stipulated in paragraph (1) has been committed within a period of 5 years from the cessation of the function, duty or task, it shall be punished by imprisonment from 1 to 5 years.

Art. 12 - The following deeds shall be punished by imprisonment from 1 to 5 years, if committed for the purpose of obtaining for himself or for other person, money, goods or other undue advantages:

a) performing of financial operations, as acts of merchant, incompatible with the position, duty or task which is carried out by a person or the financial transactions contracting, using information obtained by virtue of the position, duty or task;

b) the utilization, in any modality, directly or indirectly, of information that are not meant for publicity or allowing the access of unauthorized persons to these information.

Art. 13 - The deed of the person who has a leadership position in a party or in a political formation, in a trade union or in employer's organization or a foundation that uses its influence or authority for the purpose of obtaining for himself or for somebody else money, goods or other undue advantages, shall be punished by imprisonment from 1 to 5 years.

Art 131 - The blackmail provided in art. 194 from the Criminal Code, if a person provided in art. 1 is involved, shall be punished by imprisonment from 7 to 12 years.

Art 132 - The abuse of office against public interest, abuse of office against personal interests and abuse of office by restraining certain civil rights, if the official obtained for him or other person an advantage of patrimonial or not-patrimonial nature, shall be punished by imprisonment from 3 to 15 years.

Art. 14 - If the deeds provided in art. 12 and 13 are committed under the terms of art. 9, the maximum punishment provided by law shall be increased by 3 years.

Art. 15 - The attempt to the offences provided in the present section shall be punished.

Art. 16 - If the deeds provided in the present section constitute more severe offences, according to the Criminal Code or to other special laws, these are punished under the terms and with the sanctions established in those laws.

Section 4 Offences directly connected to corruption offences

Art. 17 - In the meaning of the present law, the following offences are in direct connection with the corruption offences, with the offences assimilated to them or with the offences against the financial interests of the European Communities:

a) the concealment of goods originating in the commission of an offence provided in

sections 2 and 3, as well as favouring the persons that committed such offence;

b) the association for the purpose of committing an offence provided in sections 2 and 3 or in let. a) of the present article;

c) the forgery and the use of forgery committed for the purpose of hiding the perpetration of one of the offences provided in sections 2 and 3 or committed for achieving of the aim pursued by such an offence;

d) the abuse of office against the public interests, abuse of office against personal interests and abuse of office by restraining certain civil rights, committed for achieving of the aim pursued through an offence provided in sections 2 and 3;

d1) blackmail committed in connection with those offences provided in sections 2 and 3;

e) the offences of money laundering, provided in Law no. 656/2002 on preventing and sanctioning money laundering, when the money, goods or other values originate in the commitment of an offence provided in sections 2 and 3;

f) the contraband with goods originating in the commitment of an offence provided in sections 2 and 3 or committed for achieving the aim pursued by such offence;

g) the offences provided in Law no. 87/1994 for the fighting tax evasion, committed in connection with the offences provided in sections 2 and 3;

h) the offences of fraudulent bankruptcy and the other offences provided by Law no. 31/1990 on trading companies, republished, with subsequent modifications and completions, committed in connection with the offences provided in sections 2 and 3;

i) the trafficking in drugs, trafficking in toxic substances and the non-observance of the firearms and ammunitions regime, committed in connection with a offence provided in sections 2 and 3.

j) the trafficking in human beings provided in Law no. 678/2001, on preventing and countering trafficking in human beings, committed in connection with a offence provided in sections 2 and 3.

k) the offence provided in GEO no. 159/2001 on preventing and countering the utilization of the banking and financial system in the purpose of financing terrorism acts, approved by Law no. 466/2002, committed in connection with a offence provided in sections 2 and 3.

Art. 18 - (1) The offences provided in art. 17 let. a) - d1) shall be sanctioned with the punishment provided in the Criminal Code for such offences, the maximum of which shall be increased by 2 years.

(2) The offences provided in art. 17 let. e) shall be sanctioned with the punishments provided in Law no. 656/2002 on the prevention and sanctioning money laundering, the maximum of which shall be increased by 3 years.

(3) The offences provided in art. 17 let. f) shall be sanctioned with the punishments

provided in Law no. 141/1997 regarding the Customs Code of Romania, the maximum of which shall be increased, in the case of simple contraband, by 3 years, and in the case of qualified contraband, by 5 years.

(4) The offences provided in art. 17 let. g) shall be sanctioned with the punishment provided in Law no. 87/1994 on fighting tax evasion, the maximum of which shall be increased by 2 years.

(5) The offences provided in art. 17 let. h) shall be sanctioned with the punishment stipulated in Law no. 31/1990, republished, the maximum of which shall be increased by 2 years.

(6) The offences provided in art. 17 let. i) regarding the trafficking in drugs shall be sanctioned with the punishments provided by the Law no. 143/2003 on countering trafficking and illicit consume of drugs, the maximum of which shall be increased by 2 years, the offence of trafficking toxic substances shall be punished according art. 312 from the Criminal Code the maximum of which shall be increased by 2 years, and the offence of non-observance of the firearms regime shall be sanctioned according art. 279 from the Criminal Code, the maximum of which shall be increased by 2 years.

(7) The offences provided in art. 17 let. j) regarding trafficking in human beings shall be punished according with Law no. 678/2001 on preventing and countering trafficking in human beings the maximum of which shall be increased by 2 years.

The offence provided in art. 17 let. k) shall be sanctioned with the punishment provided by GEO no. 159/ on preventing and countering the utilization of the banking and financial system in the purpose of financing terrorism acts, approved by Law no 466/2002, the maximum of which shall be increased by 2 years.

Section 41 Offences against the financial interests of the European Communities

Art. 18(1) Using of presenting of false, inexact or incomplete documents or declarations, which has as result the illegitimate obtaining funds from the general budget of the European Communities or from the budget administrated by them or on their behalf, shall be punished with imprisonment from 3 to 15 years and retaining certain rights.

(2) The deliberately overlooking of providing the information required according to the law, with the purpose of obtaining funds from the general budget of the European Communities or from the budget administrated by them or on their behalf, shall be sanctioned with the same punishment.

(3) If the deeds provided in art. 1 and 2 generated particularly serious consequences, the punishment shall be the imprisonment from 10 to 20 years and restraining certain rights.

(1) Changing the destination of the funds obtained from the general budget of the

European Communities or from the budget administrated by them or on their behalf, without observing the law, shall be punished with imprisonment from 6 months to 5 years.

(2) If the deed provided in para. 1 generated particularly serious consequences, the punishment shall be the imprisonment from 5 to 15 years and restraining certain rights.

(3) Changing the destination of a legal obtained benefit, without observing the law, if the deed has as result the illegal diminishing of the resources from the general budget of the European Communities or from the budget administrated by them or on their behalf, shall be sanctioned with the punishment provided in para. 1.

(1) Using or presenting of false, inexact or incomplete documents or declarations, if the deed has as result the diminishing of the resources from the general budget of the European Communities or from the budget administrated by them or on their behalf, shall be punished with imprisonment from 3 to 15 years and restraining certain rights.

(2) The deliberately overlooking of providing the information required according to the law, if the deed has as result the illegal diminishing of the resources from the general budget of the European Communities or from the budget administrated by them or on their behalf, shall be sanctioned with the same punishment.

(3) If the deeds provided in para. 1 and 2 generated particularly serious consequences, the punishment shall be the imprisonment from 10 to 20 years and restraining certain rights.

Art. 184 The attempt to the offences provided in art. 181 - 183 shall be punished.

Art. 185 The guilty non-observing of an office duty, by non-performing it or deficient performing it, by a director, administrator or the person with decisional or control attributions within a economic agent, if it had as result the commission of one of the offences provided in art. 181 - 183 or the commission of a corruption or money laundering offence in connection with the funds of the European Communities, by a person subordinate to him/she and who acted on behalf of that specific economic agent, is punished with imprisonment from 6 months to 5 years and restraining certain rights.

Section 5 Common provisions

Art. 19 - In the case of committing the offence to which the present chapter refers, the money, assets and any other goods that were given in order to determine the committing of the offence or to reward the offender or those obtained by committing the offence, if they are not returned to the injured person and to the extent that they do not serve to his/her compensation, shall be confiscated, and if the goods are not found, the convict shall be obliged to pay their equivalent in money.

Art. 20 - If one of the offences provided in the present article was committed, taking

the seizure measures is compulsory.

Chapter IV Procedural Provisions

Section 1 General provisions

Art. 21 - (1) The offences provided in the present law as corruption offences or as offences assimilated to those or as offences in direct connection with the corruption offences, if they are flagrant, shall be pursued and judged according to the provisions of art. 465 and art. 467 - 479 from the Criminal Procedure Code.

(2) If the offences provided in para. (1) are not flagrant, the criminal pursuit and the trial shall be carried out according to the ordinary law procedure.

Art. 22 - In the case of the offences provided in the present law, the criminal pursuit shall be mandatory carried out by the prosecutor.

Section 2 Special provisions on discovering and pursuit of offences

Art. 23 - (1) The persons with control attributions shall be obliged to notify the criminal pursuit organ or, as the case may be, the organ for ascertaining the commission of offences, authorized by law, with regard to any information from which grounds result that an operation or an illicit act, that could draw criminal liability according to the present law, has been performed.

(2) The persons with control attributions are obliged, during the performing of the control act, to proceed to the ensuring and preserving the traces of the offence, of the material evidence and of any means of proof that might assist the criminal pursuit organs.

Art. 24 - The persons provided in art. 1 let. e), who have knowledge of operations that involve the circulation of capitals or other activities, provided in art. 1, regarding amounts of money, goods or other values that are supposed to originate from corruption offences, assimilated to corruption offences or offences in connection with corruption offences, have the obligation to notify the criminal pursuit organs or, as the case may be, the organs for ascertaining of the commission of the offence or the control organs authorized by law.

Art. 25 - (1) The performing in good faith of the obligations provided in art. 23 and 24 shall not constitute an infringement of the professional or banking secret and shall not draw penal, civil or disciplinary liability.

(2) The provisions stipulated in para. (1) shall apply even if the pursuit or the judging of the notified deeds led to the not starting or cessation of the criminal pursuit or acquittal.

(3) Repealed by Law no 161/2003.

(4) The non-fulfilment with mala fide of the obligations provided in art. 23 and 24 represent offences and shall be punished according to art. 262 from the Criminal Code.

Art. 26 - The banking and the professional secrets, excepting the professional secret of lawyers exercised according to the law, are not opposable nor to the prosecutor, after the beginning of criminal investigations, neither to the courts. Data and information required by the prosecutor or the court are given at the written request of prosecutor, during criminal pursuit, or at written request of the court during judgement.

Art. 261(1) In case there are solid and concrete grounds that an offence of taking bribe, provided in art. 254 from the Criminal Code, of receiving undue advantages, provided in art. 256 from the Criminal Code or of trading in influence, provided in art. 257 from Criminal Code is committed or are made preparations for committing such offences, by a civil servant, the prosecutor can authorize the use of the undercover investigators or the investigators with real identity, with the purpose of discovering the deeds, identifying the perpetrators and obtaining the means of evidence.

Undercover investigators are operative agents of the judiciary police, especially appointed for this purpose, according to the law.

(3) The investigators with real identity are operative agents of the judiciary police.

(4) The authorization for the use of undercover investigators or investigators with real identity is given through motivated ordinance by the competent prosecutor to perform the criminal investigation, for a period of maximum 30 days, and may be extended, in a motivated manner, only if the grounds for granting the authorization persist. Each extension may not exceed 30 days, and the total duration of the authorization, in the same case and with regard to the same person, may not exceed 4 months.

(5) The prosecutor's ordinance authorizing the use of undercover investigators or investigators with real identity must comprise, besides the mentions provided by art. 203 from the Criminal Procedure Code, the following:

a) the solid and concrete grounds regarding the commission or the preparation of the commission of the offences provided by art. 254, art. 256 or 257 from the Criminal Code;

b) the civil servant towards whom there is a supposition that he committed or prepares the commission of an offence provided by art. 254, art. 256 or 257 of the Criminal Code, when his identity is known;

c) the activities that the undercover investigator or the investigator with a real identity is authorized to perform;

d) the identity under which the undercover investigator will perform the authorized activities;

e) the period for which the authorization is issued;

(6) The undercover investigators or investigators with real identity can be authorized to promise, to offer or, the case may be, to give money or other advantages to a civil

servant, according to art. 254, art. 256 or art. 257 from Criminal Code.

(7) The reports concluded by the undercover investigator or the investigator with real identity with regard to the activities performed, authorized according to para. 6, may constitute evidence and shall be used only in the criminal case for which the authorization was issued.

(8) The real identity of undercover investigators may not be revealed during or after the conclusion of their action.

(9) The prosecutor competent to authorize the use of the undercover investigator has the right to know his real identity, with the observance of the professional secret.

(10) The undercover investigators or investigators with real identity may be heard as witnesses according to art. 862 from the Criminal Procedure Code.

Art. 27 - (1) When there are solid grounds on the commission of one of the offences provided in the present law, for the purpose of gathering proofs or of identifying the perpetrator, the prosecutor may ordain, for a period of maximum 30 days:

a) putting under surveillance of the banking accounts and of the accounts assimilated to them;

b) putting under surveillance or intercepting the telephone lines;

c) the access to the informational systems;

d) the communication of acts, banking, financial or accounting documents.

(2) For solid grounds, the authorization provided in para. 1 may be prolonged, in the same terms, each extension not exceeding 30 days. The maximum duration of the authorized measures provided in para. 1 let. a) - c) is 4 months.

(3) During judgement, the court may ordain the prolongation of these measures by motivated decision.

(4) The provisions of art. 911-915 from the Criminal Procedure Code shall be accordingly applied.

Art. 28 Repealed by GEO no 43/2002

Art. 29 - (1) For the first instance trial of the offences provided by the present law, specialized panels of judges shall be set up.

(2) Within the first instance courts, tribunals and courts of appeal, the specialized panels are constituted by 2 judges.

Section 3 Common provisions

Art. 30 - The final judicial decision of condemnation or acquittal may be published in the central newspapers or, as the case may be, local, mentioned in the decision.

Art. 31 (1) - The provisions of the present law are completed, with regard to the criminal pursuit and judging, with the provisions of the Criminal Procedure Code.

(2) The provisions of Law no. 92/1992 on the judiciary organisation republished in the Official Gazette of Romania, Part I, no. 259 from September 30, 1997, with

subsequent amendments and completions shall be applied accordingly, to the present law, if the present law does not provides otherwise.

Chapter V Final Provisions

Art. 32 Repealed.

Art. 33 - Any provision contrary to the present law shall be repealed.