

# THE GOVERNMENT EMERGENCY ORDINANCE no. 43

## from April 4<sup>th</sup> 2002 regarding the National Anticorruption Directorate

Based on the provisions of article 114 paragraph (4) of the Romanian Constitution,

**The Romanian Government adopts the present emergency ordinance.**

### CHAPTER I

#### General provisions

**Art. 1** - (1) By the present emergency ordinance, the National Anticorruption Directorate is set up, as a structure with legal personality, within the Prosecutor's Office attached to the High Court of Cassation and Justice, following the reorganization of the National Anticorruption Prosecutor's Office.

(2) The National Anticorruption Directorate has its headquarters in Bucharest and exercises its duties on the entire Romanian territory with specialized prosecutors in combating corruption.

(3) \*\*\* Annulled by the Government Emergency Ordinance no.134/2005

(3<sup>1</sup>) The General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice leads the National Anticorruption Directorate through the chief prosecutor of this Directorate. The General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice solves the conflicts of jurisdiction which appear between the National Anticorruption Directorate and the other structures or units within the Public Ministry.

(4) \*\*\* Annulled by the Government Emergency Ordinance no.134/2005;

**Art. 2** – The National Anticorruption Directorate is independent in its relation with the courts and with the prosecutor's offices attached to them, as well as in its relation with the other public authorities, exercising its duties under the law and only for its enforcement.

**Art. 3** – (1) The duties of the National Anticorruption Directorate shall be as follows:

a) to conduct criminal investigations under the conditions provided by the Criminal Procedural Code, by the Law no.78/2000 on preventing, discovering and sanctioning corruption offences and by the present emergency ordinance, for the offences provided by the Law no. 78/2000 which fall, according to art. 13, under the jurisdiction of the National Anticorruption Directorate;

b) to conduct, supervise and control the criminal investigation acts, carried out as a result of the prosecutor's orders by the judicial police officers who are under the exclusive authority of the Chief Prosecutor of the National Anticorruption Directorate;

c) to conduct, supervise and control the technical activities of the criminal investigation, carried out by specialists in the economic, financial, banking, customs, IT fields, as well as in other fields, appointed within the National Anticorruption Directorate;

c<sup>1</sup>) to notify the courts for taking the measures provided by law and for prosecuting cases regarding the crimes provided by Law no. 78/2000, with its subsequent amendments, which fall, according to art. 13, under the jurisdiction of the National Anticorruption Directorate;

c<sup>2</sup>) to take part in trials, under the conditions provided by law;

c<sup>3</sup>) to exercise the means of appeal against the judges' decisions, under the conditions provided by law;

d) to study the causes which generate corruption and the conditions which favor it, to draw up and submit

- proposals with a view to their elimination, as well as to improve the criminal legislation;
- e) to draw up the annual report on the activity of the National Anticorruption Directorate and to present it to the Superior Council of Magistracy and to the Minister of Justice not later than February the next year, and the Minister of Justice will present to the Parliament the conclusions on the activity report of the National Anticorruption Directorate;
  - f) to set up and update the data base in the field of corruption deeds.
  - g) to carry out other tasks provided by law.
- (2) The National Anticorruption Directorate exercises its rights and fulfils its procedural tasks provided by law in matters regarding the offences provided by the present emergency ordinance under its jurisdiction.
- (3) In performing his/her duties, the Chief Prosecutor of the National Anticorruption Directorate issues orders.

## **CHAPTER II**

### **Organization and functioning of the National Anticorruption Directorate**

**Art. 4 –** (1) The National Anticorruption Directorate is led by a Chief Prosecutor, assimilated to the First Deputy General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice. The Chief Prosecutor of the National Anticorruption Directorate is helped by 2 deputy chief prosecutors, assimilated to the Deputy General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.

(2) In performing his/her activity, the Chief Prosecutor of the National Anticorruption Directorate is helped by two counselors, assimilated to the counsellors of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.

(3) The Chief Prosecutor of the National Anticorruption Directorate is a main budget administrator.

(4) The Chief Prosecutor of the National Anticorruption Directorate is a secondary budget administrator. The funds for the current and capital expenses of the National Anticorruption Directorate come from the state budget, being distinctly highlighted within the budget of the Prosecutor's Office attached to the High Court of Cassation and Justice. A deposit of at least 2 million RON is constituted annually for actions regarding the organization and ascertainment of sting operations for corruption offences, at the disposal of the Chief Prosecutor of the National Anticorruption Directorate. This sum is provided under the title "Material expenses and services" within the budget of the National Anticorruption Directorate, and its management and use will be established by order of the chief prosecutor of this Directorate.

**Art. 5 –** (1) The National Anticorruption Directorate is organized in sections led by chief prosecutors of section, helped by deputy chief prosecutors of section. The sections are set up and dissolved by order of the Chief Prosecutor of the National Anticorruption Directorate with the opinion of the Superior Council of Magistracy.

(2) Following the order of the Chief Prosecutor of this Directorate, territorial services, services, offices and other compartments of activity can be set up within the National Anticorruption Directorate.

(3) The headquarters of the territorial services and their district are established by the Chief Prosecutor of the National Anticorruption Directorate, usually in the cities where the prosecutor's offices attached to the courts of appeal have their headquarters and by taking into consideration their district.

(4) The territorial services, the services and the offices are led by chief prosecutors.

(4<sup>1</sup>) An office for information and public relations shall function within the National Anticorruption Directorate thus, ensuring the link with the public and the media in order to guarantee the transparency of the criminal investigation activity, under the conditions provided by law.

(4<sup>2</sup>) The leader of the office, who is also the spokesperson, can be a prosecutor appointed by the Chief Prosecutor of the National Anticorruption Directorate or a journalist, hired on the position of specialist, appointed on the basis of a competition or exam.

(5) The judicial police officers and agents carry out their activity within sections, services or other activity

compartments, being sent on positions by order of the Chief Prosecutor of the National Anticorruption Directorate.

**Art. 6** – The National Anticorruption Directorate functions with prosecutors, judicial police officers and agents, specialists in the economic, financial, banking, customs, IT field and also in other fields, specialized auxiliary personnel, as well as economic and administrative personnel, to the extent of the number of positions provided in the list of positions, approved according to the law.

**Art. 7** - \*\*\* Annulled by the Government Emergency Ordinance no. 24/2004

**Art. 8** - \*\*\* Annulled by the Law no. 247/2005

**Art. 9** - \*\*\* Annulled by the Law no. 247/2005

**Art. 10** (1) In order to carry out with celerity and thoroughly the activities of discovering and investigating corruption offences, police officers function within the National Anticorruption Directorate, forming the judicial police of the National Anticorruption Directorate.

(2) The judicial police officers and agents, provided in the first paragraph carry out their activity only within the National Anticorruption Directorate, under the exclusive authority of the chief prosecutor of this Directorate.

(3) The judicial police officers and agents can carry out only those acts of criminal investigation ordered by the prosecutors of the National Anticorruption Directorate. The judicial police officers and agents carry out their activity under the direct leading, supervision and control of the prosecutor.

(4) The orders of the prosecutors within the National Anticorruption Directorate are mandatory for the judicial police officers provided in the first paragraph. The acts drawn up by the judicial police officers as a result of the written order of the prosecutor are carried out on his/her behalf.

(5) The secondment of the judicial police officers and agents to the National Anticorruption Directorate is carried out following the nominal proposal of the Chief Prosecutor of the National Anticorruption Directorate, by order of the Minister of Administration and Interior, and their appointment on position is made by order of the Chief Prosecutor of this Directorate.

(6) The judicial police officers and agents are seconded in the interest of the institution for a period of 6 years, with the possibility of extending it, with their consent.

(6') The secondment of the judicial police officers and agents within the National Anticorruption Directorate ceases before the end of the period of time provided in the sixth paragraph through revocation from the position disposed by the motivated order of the Chief Prosecutor of the National Anticorruption Directorate.

(7) The judicial police officers and agents cannot receive any task from the hierarchically superior bodies.

(8) During their appointment within the National Anticorruption Directorate the judicial police officers and agents have the rights and obligations provided by law for the judicial police officers and agents, with the exceptions provided by the present emergency ordinance. The tasks provided by law for the Minister of Administration and Interior regarding the rights and responsibilities of the judicial police officers and agents are carried out by the Chief Prosecutor of the National Anticorruption Directorate. The tasks regarding the granting of professional ranks for the judicial police officers and agents are carried out by the Minister of Administration and Interior, at the proposal of the Chief Prosecutor of the National Anticorruption Directorate.

(9) \*\*\* Annulled by the Law no. 601/2004.

**Art. 11** – (1) In order to clear up some technical aspects in the criminal investigation activity, specialists of high qualification in the economic, financial, banking, customs, IT fields, as well as in other fields, are appointed within the National Anticorruption Directorate, by order of the Chief Prosecutor of this Directorate, with the approval of the competent ministries.

(2) The specialists provided in the first paragraph have the capacity of civil servant and they carry out their activity under the direct leading, supervision and unmediated control of the prosecutors within the National Anticorruption Directorate. The specialists have the rights and obligations provided by law for civil servants, with the exceptions mentioned in the present emergency ordinance. Moreover, the

specialists adequately benefit from the rights provided by article 26 of the Government Emergency Ordinance no. 177/2002, regarding the salaries and other rights of the magistrates, with its subsequent amendments and completions.

(3) – (4) \*\*\* Annulled by the Law no. 255/2013

---

\*) Government Emergency Ordinance no. 177/2002 was annulled by the Government Emergency Ordinance no. 27/2006

**Art. 12** – The position of prosecutor, judicial police officer or specialist within the National Anticorruption Directorate is incompatible with any other public or private position, except high educational didactic positions.

### **CHAPTER III**

#### **The jurisdiction of the National Anticorruption Directorate**

##### **Art. 13**

\*) Amended by article 115 of the Law no. 187/24.10.2012, entering into force on February 1<sup>st</sup> 2014 Article 115 was annulled by the Law no. 255/19.07.2013, entering into force on February 1<sup>st</sup> 2014

\*\*) Amended by the Law no. 255/19.07.2013, entering into force on February 1<sup>st</sup> 2014, having the following text:

(1) The offences provided by the Law no.78/2000 with its subsequent amendments and completions, committed in one of the following circumstances, fall under the jurisdiction of the National Anticorruption Directorate:

a) if, regardless of the capacity of the persons who committed them, they caused a material damage higher than the equivalent in ROL of 200,000 EURO, or if the value of the sum or of the goods which represent the object of the corruption offence is higher than the equivalent in ROL of 10,000 EURO;

b) if, regardless of the value of the material damage or of the value of the sum or of the goods which represent the object of the corruption offence, they are committed by deputies; senators; the Romanian members of the European Parliament; the member appointed by Romania within the European Commission; Government's members; state secretaries; under state secretaries and the persons assimilated to them; counselors of the ministers; the judges of the High Court of Cassation and Justice and of the Constitutional Court; the other judges and prosecutors; the members of the Superior Council of Magistracy; the president of the Legislative Council and the person who replaces him/her; the Ombudsman and his/her deputies; the presidential and state counselors within the Presidential Administration; the state counselors of the Prime Minister; the external public members and auditors from the Court of Accounts of Romania and of the County Chambers of Accounts; the Governor and the First Deputy Governor and the Deputy Governor of the National Bank of Romania; the president and the vice-president of the Council of Competition; officers, admirals, generals and marshals; police officers; the presidents and the vice-presidents of county councils; the general mayor and the deputy mayors of the Bucharest municipality; the mayors and the deputy mayors of the sectors of Bucharest; the mayors and the deputy mayors of municipalities; county counselors; prefects and sub-prefects; the leaders of the central and local public institutions and authorities and the persons filling control position therein, except for the leaders of the public institutions and authorities at the level of towns and communes and of the persons with control positions within them; lawyers; commissioners of the Financial Guard; customs employees; persons with leading positions, higher than and including that of a director within the autonomous administrators of national interest, of the national companies and firms, of the banks and trading companies where the state is a main shareholder, of the public institutions having tasks in the privatization process, and of the central financial – banking units; persons provided by articles 293 and 294 of the Criminal Code.

(2) The offences against the financial interests of the European Union fall under the jurisdiction of the National Anticorruption Directorate.

(3) The offences provided by articles 246, 297 and 300 of the Criminal Code fall under the jurisdiction of the National Anticorruption Directorate if a material damage was caused and if it was higher than the equivalent in ROL of 1,000,000 EUROS.

(4) The prosecutors of the National Anticorruption Directorate must conduct the criminal investigation for the offences provided by paragraphs (1) – (3).

(5) In case the prosecutor of the National Anticorruption Directorate orders the severance of the case during the criminal investigation, he/she can continue carrying out the criminal investigation in the severed case, too.

(6) The criminal investigation in cases regarding the offences provided by paragraphs (1) – (3) committed by active military personnel shall be carried out by the military prosecutors of the National Anticorruption Directorate, with no regard to the rank the investigated persons have.

**Art. 13<sup>1\*)</sup>** - \*\*\* Annulled by the Government Emergency Ordinance no. 134/2005

---

\*) Article 13<sup>1</sup> was introduced by the Law no. 161/2003, published in the Official Gazette no. 279 from April 21<sup>st</sup> 2003.

#### **CHAPTER IV**

##### **Procedural provisions**

**Art. 14** – (1) The persons with control tasks have the obligation to notify the National Anticorruption Directorate regarding any data or information from which it results that one of the offences falling under the jurisdiction of the National Anticorruption Directorate, through the current emergency ordinance, was committed.

(2) The persons with control tasks have the obligation, during the carrying out of the control, in the situations provided by paragraph (1), to ensure and preserve the traces of the offence, the material evidence and any other means of evidence which can help the criminal investigation structures.

(3) The services and structures specialized in collecting and processing information shall have the obligation to immediately put at the disposal of the National Anticorruption Directorate the data and information they hold in connection with the perpetration of corruption offences.

(4) The services and structures specialized in collecting and processing information shall, at the request of the Chief Prosecutor of the National Anticorruption Directorate or of the prosecutor specially assigned by him/her, put at his/her disposal the data and information provided under paragraph 3), unprocessed.

5) Non-observance of the obligations provided under paragraphs 1) through 4) shall entail the juridical liability, according to the law.

**Art. 15** – Whenever the prosecutors of the prosecutor's offices attached to the courts of law find out, in carrying out the criminal investigation, that the offence making the object of the case is one of the offences assigned by the present emergency ordinance within the jurisdiction of the National Anticorruption Directorate, they shall have the obligation to immediately inform the prosecutors from this Directorate.

**Art. 15<sup>1</sup>** – The National Anticorruption Directorate is authorized to have and to use adequate means to obtain, verify, process and store the information regarding the corruption offences provided by the Law no. 78/2000, with its subsequent amendments, according to law. Any information of an operative nature is immediately transmitted to the competent authorities, for verifying and valuing it.

---

\*) Article 15<sup>1</sup> was introduced by the Government Emergency Ordinance no. 24/2004, published in the Official Gazette no. 365 from April 27<sup>th</sup> 2004.

**Art. 16** – \*\*\* Annulled by the Law no. 255/2013

**Art. 17** – \*\*\* Annulled by the Government Emergency Ordinance no. 134/2005

**Art. 18** – For the proper carrying out of the criminal investigation, the prosecutors within the National Anticorruption Directorate can dispose specific measures for protecting the witnesses, the experts and the victims according to the law.

**Art. 19** – The person who committed one of the offences assigned by the present emergency ordinance within the jurisdiction of the National Anticorruption Directorate and who during the criminal investigation, denounces and facilitates the identification and holding criminally liable other persons, who committed such offences, shall benefit of the reduction to half of the penalty limits provided by law.

**Art. 20** – \*\*\* Annulled by the Law no. 255/2013

**Art. 21** – The persons who carry out the criminal investigation, the specialists provided under Art. 11, as well as the auxiliary specialized personnel, shall be obliged to keep the professional secret with regard to the data and information obtained in this capacity.

**Art. 22** – \*\*\* Annulled by the Law no. 255/2013

**Art. 22<sup>1\*)</sup>** – \*\*\* Introduced by the Law no. 161/2003 and annulled by the Law no. 356/2006.

**Art. 22<sup>2\*)</sup>** – (1) The indictments drawn up by the prosecutors within the territorial services of the National Anticorruption Directorate are verified by the chief prosecutors of these services. The ones drawn up by the chief prosecutors of the territorial services, as well as those drawn up by the prosecutors within the central structure of the National Anticorruption Directorate are verified by the chief prosecutors of sections. When the indictments are drawn up by the chief prosecutors of the National Anticorruption Directorate's sections, the verification is made by the chief prosecutor of this Directorate.

(2) The complaint against the measures adopted or the acts carried out by the prosecutor or conducted based on his/her orders shall be solved by the hierarchically superior prosecutors provided by paragraph (1).

---

\*) Article 22<sup>2</sup> was introduced by the Government Emergency Ordinance no. 60/2006, published in the Official Gazette no. 764 from September 7<sup>th</sup> 2006.

**Art. 22<sup>3\*)</sup>** – The prosecutors from the central structure of the National Anticorruption Directorate can take over the cases under the jurisdiction of the territorial structures of the Directorate, with a view to conducting the criminal investigation, following the motivated order of the Chief Prosecutor of the National Anticorruption Directorate.

---

\*) Article 22<sup>3\*)</sup> was introduced by the Government Emergency Ordinance no. 60/2006, published in the Official Gazette no. 764 from September 7<sup>th</sup> 2006.

**Art. 23** – The persons under pretrial detention in the cases under the jurisdiction of the National Anticorruption Directorate shall be detained in places especially established within the National Anticorruption Directorate, functioning with delegated personnel from the General Direction of Penitentiaries or, as the case may be, in the pretrial detention sections of the penitentiaries or in the arrest of the General Anticorruption Directorate within the Ministry of Administration and Interior.

**Art. 24** – The provisions of the Criminal Procedure Code and the procedural provisions of the Law no.78/2000 on preventing, detecting and sanctioning corruption offences and of the Law no.115/1999 on ministerial accountability, republished, shall be applied accordingly, also in the cases falling under the jurisdiction of the National Anticorruption Directorate.

## **CHAPTER V**

### **International Cooperation**

**Art. 25** – With a view to a mutual assistance regarding the offences under the jurisdiction of the National Anticorruption Directorate and to a data and information exchange regarding the investigation and prosecution of such offences, a liaison office with similar institutions from other states is set up.

**Art. 26** – \*\*\* Annulled by the Law no. 161/2003

## **CHAPTER IV**

### **Final Provisions**

**Art. 27** – (1) The National Anticorruption Directorate shall function with the following maximum number of positions:

- a) 145 positions of prosecutors;
- b) 170 positions of judicial police officers and agents;
- c) 55 positions of specialists;
- d) 99 positions of auxiliary specialized personnel;
- e) 44 positions of connected personnel
- f) 54 positions of economic and administrative personnel.

(2) The maximum number of positions within the National Anticorruption Directorate can be modified by a Government Decision.

**Art. 28** – (1) – (5) \*\*\* Annulled by the Government Emergency Ordinance no. 27/2006

(6) The salaries of the specialized auxiliary personnel and of the administrative and economic one are provided by law for the same category of staff within the High Court of Cassation and Justice.

(7) \*\*\* Annulled by the Government Emergency Ordinance no. 27/2006

(8) The material and financial rights of the prosecutors, specialized auxiliary personnel, specialists, administrative and economic staff, military employees and other categories of staff within the National Anticorruption Directorate, as well as of the judicial police officers and agents are paid from the funds of this Directorate.

(9) \*\*\* Annulled by the Government Emergency Ordinance no. 27/2006

**Art. 28<sup>1\*)</sup>** – The National Anticorruption Directorate can grant monthly bonuses with in the limit of 5% of the salaries expenses, up to the annually approved funds from the budget with this destination. The bonuses can be granted to the magistrates and to the other categories of staff which achieved or directly participated in the obtaining of results, considered to be valuable. The remained sums can be used in the following months within the same budgetary year.

---

\*) Article 28<sup>1\*)</sup> was introduced by the Government Emergency Ordinance no. 24/2004, published in the Official Gazette no. 365 from April 27<sup>th</sup> 2004.

**Art. 28<sup>2\*)</sup>** – The auto park, the fuel consumption and the manner of using the auto park are established by order of the Chief Prosecutor of the National Anticorruption Directorate.

---

\*) Article 28<sup>2\*)</sup> was introduced by the Government Emergency Ordinance no. 24/2004, published in the Official Gazette no. 365 from April 27<sup>th</sup> 2004.

**Art. 28<sup>3\*)</sup>** – The rights of the staff within the National Anticorruption Directorate sent abroad or invited by organizations or other foreign partners are established through the rules approved by order of the Chief Prosecutor of this Directorate, and the necessary expenses for traveling abroad are approved, within the limits of the rules approved for the public institutions staff, by the Chief Prosecutor of the National Anticorruption Directorate.

---

\*) Article 28<sup>3\*)</sup> was introduced by the Law no. 601/2004, published in the Official Gazette no. 1227 from

December 23<sup>rd</sup> 2004.

**Art. 29** – The funds necessary to enforce the present emergency ordinance shall be provided from the Public Ministry's budget approved for the year 2002, which shall, by Government Decision, be supplemented from the Reserve Fund at the Government's disposal.

**Art. 30** – The provisions of the Law no.92/1992 on judicial organization, republished, with its subsequent amendments and completions, shall be applied also in the case of the National Anticorruption Directorate, if the present emergency ordinance does not provide otherwise.

**Art. 31** – (1) The Government and the General Council of the Bucharest Municipality shall take immediate measures to provide the headquarters for the National Anticorruption Directorate.

(2) The Ministry of Justice, the Prosecutor's Office attached to the High Court of Cassation and Justice, the Ministry of Administration and Interior and the Ministry of Public Finances shall take the necessary measures for the organization of the National Anticorruption Directorate, within 60 days after the coming into force of the present emergency ordinance.

(3) The National Anticorruption Directorate shall start functioning on September 1<sup>st</sup>2002.

**Art. 32** – (1) For the cases regarding the offences provided by the Law no. 78/2000, which are in the criminal investigation stage on the 1<sup>st</sup> of September 2002, the criminal investigation shall be carried out by the prosecutors of the National Anticorruption Directorate. The acts and documents drawn up until the 1<sup>st</sup> of September 2002 shall remain valid.

(2) The cases regarding the offences provided by the Law no.78/2000, which are pending at courts and which are sent, according to the Criminal Procedure Code, to the criminal investigation structures, shall fall under the jurisdiction of the National Anticorruption Directorate.

**Art. 33** – The Chief Prosecutor of the National Anticorruption Directorate shall adopt, through an order, the rules for enforcing the provisions of the present emergency ordinance.

**Art. 34** – On September 1<sup>st</sup> 2002, the provisions of Art. 28 and of Art.29 paragraph (2) of the Law no.78/2000, with its subsequent amendments and completions, shall be annulled.

PRIME MINISTER  
**ADRIAN NĂSTASE**

Countersigned:  
The Minister of Justice,  
**Rodica Mihaela Stănoiu**

Minister of Interior,  
**Ioan Rus**

Minister of Public Finances,  
**Mihai Nicolae Tănăsescu**

Minister of labor and social solidarity,  
**Marian Sârbu**