

(8) La structure, ainsi que les états de personnel et de fonctions de la Section de lutte contre la corruption et la criminalité organisée du cadre du Parquet auprès de la Cour suprême de Justice, des services et bureaux territoriaux spécialisés, seront établis dans les conditions prévues par la Loi n° 92/1992 sur l'organisation judiciaire, rééditée, avec les modifications ultérieures.

Art. 29. – (1) Pour le jugement des infractions de corruption et des infractions qui leur sont assimilées, prévues par la présente loi, peuvent être constituées des formations de jugement spécialisées conformément à l'art. 15 de la Loi n° 92/1992 sur l'organisation judiciaire, rééditée, avec les modifications ultérieures.

(2) Les juges qui font partie de ces formations de jugement spécialisées, les procureurs qui fonctionnent dans le cadre de la Section de lutte contre la corruption et la criminalité organisée du cadre du Parquet auprès de la Cour suprême de Justice, des services et bureaux territoriaux spécialisés, ainsi que les personnes prévues à l'art. 28 al. (4), (5) et (6) recevront, outre les autres droits pécuniaires, une augmentation de 30% du salaire de base.

Section 3

Dispositions communes

Art. 30. – La décision judiciaire définitive de condamnation ou d'acquittement peut être publiée dans les journaux centraux ou, selon le cas, locaux, mentionnés dans la décision.

Art. 31. – Les dispositions de la présente loi sont complétées, en ce qui concerne la poursuite et le jugement, avec les dispositions du Code de procédure pénale.

CHAPITRE V

Dispositions finales

Art. 32. – Dans le cas des actes juridiques conclus en violation des dispositions de la présente loi, sont applicables les dispositions des art. 14 à 22 du Code de procédure pénale.

Art. 33. – Toute disposition contraire à la présente loi est abrogée.

LAW on preventing, discovering and sanctioning of corruption acts

L A W

on preventing, discovering and sanctioning of corruption acts*

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, or they can influence them, within public services, autonomous régies, trading companies, national companies, national societies, cooperative units or other economic units;

c) who carry out control duties according to the law;

d) who grant specialized assistance to the units stipulated in let. a) and b), to the extent to which they participate in the taking of decisions or can influence them;

e) who, irrespective of their capacity, achieve, control or grant specialized assistance, to the extent to which they participate in the decision-making or can influence them, with regard to operations that involve capital circulation, banking, 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;

* The Law No. 78/2000 on preventing, discovering and sanctioning of corruption acts was published in „Monitorul Oficial al României“ (Official Gazette of Romania), Part I, No. 219 of Thursday, 18 May 2000.

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 let. 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 stipulated 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 the obtaining for them or for other persons of money, goods or other undue advantages.

Art. 3. – (1) The persons stipulated in art. 1 let. a), as well as those that hold a management position, from directors included, and up, within the autonomous régies, 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 stipulated in para (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 stipulated in art. 1 let. a) and c) are obliged to declare, within 30 days from receipt, any direct or indirect donation or physical presents 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 stipulated in para (1).

CHAPTER III Infractions

Section 1

Categories of infractions

Art. 5. – (1) In the meaning of the present law, *corruption infractions* are those infractions stipulated in art. 254 – 257 in the Penal Code, as well as infractions stipulated in special laws, as specific modalities of the infractions stipulated in art. 254 – 257 of the Penal Code, depending on the capacity of the persons that commit the acts or depending on against whom the deeds are committed or in relation to the activity domains where these are committed.

(2) In the meaning of the present law, *infractions assimilated to the corruption infractions* are the infractions, stipulated in art. 10–13.

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

Section 2

Corruption infractions

Art. 6. – The infractions of bribe taking – stipulated in art. 254 in the Penal Code, of bribing – stipulated in art. 255 in the Penal Code, of receiving undue advantages – stipulated in art. 256 in the Penal Code and of intercession – stipulated in art. 257 in the Penal Code, are punished according to those texts of law.

Art. 7. – (1) The fact of bribe taking, stipulated in art. 254 in the Penal Code, if committed by a person who, according to law, has duties of finding or of sanctioning of the contraventions or of finding pursuit or judging the infractions, are sanctioned with the punishment

stipulated in art. 254 para 2 in the Penal Code regarding the committing of the infraction by an official with control duties.

(2) The deed of bribing carried out towards one of the persons stipulated in para (1) or towards an official with control duties is sanctioned with the punishment stipulated in art. 255 in the Penal Code, the maximum of which is increased by 2 years.

(3) The infractions of accepting undue advantages and intercession, if committed by one of the persons mentioned in para (1) and (2), shall be sanctioned with the punishment stipulated in art. 256 in the Penal Code, respectively in art. 257 in the Penal Code, the maximum of which shall be increased by 2 years.

Art. 8. – The provisions of art. 254 – 257 in the Penal Code also apply to the managers, directors, administrators and auditors of trading companies, national companies and societies, autonomous régies and to any other economic units.

Art. 9. – In the case of the infractions stipulated 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 infractions shall be increased by 5 years.

Section 3

Infractions assimilated to corruption infractions

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 somebody else money, goods or other undue advantages:

a) the establishing, deliberately, of a reduced value, compared to the real market value, of the goods belonging to the economic units in which the state or an authority of the local public administration is a shareholder, committed during the privatization activity or on the occasion of a commercial transaction, or of the goods belonging to public authorities or public

institutions, during a selling activity of these, committed by those holding management, ruling or administration duties;

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 unit, to carry out for it any task, to mediate or facilitate the carrying on of certain commercial or financial operations by the private economic unit or to participate with capital to such economic unit, 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 para (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 somebody else money, goods or other undue advantages:

a) the carrying out of financial operations, as acts of merchant, incompatible with the position, duty or task which is carried out by a person or the conclusion of financial transactions, utilizing 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 a person who has a leadership position in a party or in a political formation, in a trade union or in a non-profit society 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. 14. – If the deeds stipulated in art. 12 and 13 are committed under the terms of art. 9, the maximum punishment stipulated by law shall be increased by 3 years.

Art. 15. – The attempt to the infractions stipulated in the present section is punishable.

Art. 16. – If the deeds stipulated in the present section constitute more severe infractions, according to the Penal Code or to some special laws, these are punished under the terms and with the sanctions established in those laws.

Section 4

Infractions directly connected to corruption infractions

Art. 17. – In the meaning of the present law, the following infractions are in direct connection with the corruption infractions or with infractions assimilated to them as stipulated by art. 10 – 13:

a) the concealment of goods originating in the commitment of an infraction stipulated in sections 2 and 3, as well as favouring the persons that committed such infraction;

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

c) the false and the use of forgeries committed for the purpose of hiding the perpetration of one of the infractions stipulated in sections 2 and 3 or committed for the achieving of the aim pursued by such an infraction;

d) the abuse in office against the public interests, committed for the achieving of the aim pursued through an infraction stipulated in sections 2 and 3;

e) the infractions of laundering money, stipulated under Law No. 21/1999 on preventing and sanctioning the laundering money, when the money, goods or other values originate in an infraction stipulated in sections 2 and 3;

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

g) the infractions stipulated in Law No. 87/1994 for the fighting of fiscal evasion, committed in connection with the infractions stipulated in sections 2 and 3;

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

i) the traffic with drugs, the non-observance of the firearms and ammunitions regime, the traffic of persons for the purpose of practicing prostitution, committed in connection with a crime stipulated in sections 2 and 3.

Art. 18. – (1) The infractions stipulated in art. 17 let. a)–d) shall be sanctioned with the punishment stipulated in the Penale Code for such crimes, the maximum of which shall be increased by 2 years.

(2) The infractions stipulated in art. 17 let. e) shall be sanctioned with the punishments stipulated in Law No. 21/1999 on the prevention and sanctioning of money laundering, the maximum of which shall be increased by 2 years.

(3) The infractions stipulated in art. 17 let. f) shall be sanctioned with the punishments stipulated in Law No. 141/1997 on 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 infractions stipulated in art. 17 let. g) shall be sanctioned with the punishment stipulated in Law No. 87/1994 on fighting of fiscal evasion, the maximum of which shall be increased by 2 years.

(5) The infractions stipulated 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 infractions stipulated in art. 17 let. i) shall be sanctioned, as the case may be, with the punishment stipulated in art. 312, 279 or 329 in the Penal Code.

Section 5

Common provisions

Art. 19. – In the case of committing the infraction to which the present chapter refers, the money, assets and any other goods that were given in order to determine the committing of the infraction or to reward an infringer of the law or those obtained by committing the infraction, if they are not returned to the prejudiced person and to the extent that they do not serve to its compensation, shall be confiscated, and if the goods are not found, the convict shall be obliged to pay their equivalent in money.

Art. 20. – In the case in which a crime from among those stipulated in the present article was committed, the taking of protective measures is compulsory.

CHAPTER IV

Procedural provisions

Section 1

General provisions

Art. 21. – (1) The infractions stipulated in the present law as corruption infractions or as infractions assimilated to those or as infractions in direct connection with the corruption infractions, if they are flagrant, shall be pursued and judged according to the provisions of art. 467–479 in the Code of penal procedure.

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

Art. 22. – In the case of the infractions stipulated in section 2, chapter III, the penal pursuit shall be compulsorily carried out by the public prosecutor.

Section 2

Special provisions on discovering and pursuit of infractions

Art. 23. – (1) The persons with control duties shall be obliged to notify the organ of penal pursuit or, as the case may be, the organ for the ascertaining the commitment of infractions, authorized by law, with regard to any data from which indications result that an operation or an

illicit act has been carried out that could draw penal responsibility according to the present law.

(2) The persons with control duties are obliged, during the carrying out of the control act, to proceed to the ensuring and preserving the traces of the infraction, of the material evidence and of any means of proof that might assist the organs of penal pursuit.

Art. 24. – The persons stipulated in art. 1 let. e), who know of operations that involve the circulation of capitals or other activities, stipulated in art. 1, regarding amounts of money, goods or other values that are supposed to originate from crimes of corruption or assimilated to those, have the obligation to intimate the organs of penal pursuit or, as the case may be, the organs for the ascertaining of the commitment of the crime or the control organs authorized by law.

Art. 25. – (1) The carrying out in good faith of the obligations stipulated in art. 23 and 24 does not constitute an infringement of the professional or banking secret and does not draw penal, civil or disciplinary responsibility.

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

(3) The anonymous intimations cannot be taken into consideration.

(4) The non-fulfillment by ill intention of the obligations stipulated in art. 23 and 24 represent crimes and are punished according to art. 262 in the Penal Code.

Art. 26. – The banking secret and the professional one are not opposable to the organs of penal pursuit, the judging instances or the Court of Audit.

Art. 27. – (1) When there are solid indications regarding the commitment of one of the crimes stipulated in the present law, for the purpose of gathering proofs or of indentifying the culprit, the public prosecutor may order, for a period of at most 30 days:

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

b) the putting under surveillance or under listening of the telephone lines;

c) the access to the informational systems;

d) the communication of authentic documents or under private signature of banking, financial or accounting documents.

(2) For solid reasons, the measures may be extended by the public prosecutor by motivated ordinance, each extension not exceeding 30 days.

(3) During the judgement the instance may order the extension of these measures by motivated conclusion.

Art. 28. – (1) By the present law, the Section for fighting corruption and organized criminality is set up, that shall operate within the Prosecutor's Office by the Supreme Court of Justice, as specialized structure in this domain, at national level.

(2) Similarly, by the present law, services are set up for fighting corruption and organized criminality within the prosecutor's offices by the courts of appeal and bureaus for fighting corruption and organized criminality within the prosecutor's offices by the courts, as specialized territorial structures in this domain. The activity of these services and bureaus shall be coordinated by the Section for fighting corruption and organized criminality, within the Prosecutor's Office by the Supreme Court of Justice.

(3) The Section for fighting corruption and organized criminality within the Prosecutor's Office by the Supreme Court of Justice, as well as the services and the bureaus stipulated in para (2) are carrying out, according to the Code of penal procedure and other special laws, the penal pursuit regarding the crimes of corruption stipulated in the present law, as well as the crimes committed under the conditions of organized crime. Similarly, the section leads and controls the activities carried out by the organs of the police and other organs involved in discovering and penal pursuit of such crimes, supervising that the documents completed by these organs be effected by observing the legal provisions.

(4) For the purpose of effecting with celerity and thoroughness the activities of discovering and pursuit of the crimes of corruption and of the crimes assimilated to them, stipulated in the present law, at the request of the general public prosecutor of the Prosecutor's Office by the

Supreme Court of Justice, the organs that have equal legal competencies in the discovery and pursuit of these crimes, shall delegate, for one year, the necessary number of persons specialized in this field, in order to carry out, under the direct leadership, the supervision and direct control of the public prosecutors in the Section for fighting corruption and organized criminality within the Prosecutor's Office by the Supreme Court of Justice, the trial documents conferred by law.

(5) For the clarifying of certain technical problems of specialty, there may function, under the terms of para (4), by the Section for fighting corruption and organized criminality within the Prosecutor's Office by the Supreme Court of Justice, specialists in the financial, banking, customs or in other similar fields.

(6) The provisions of para (4) and (5) apply accordingly also in the case of specialized structures in the field of corruption and organized criminality, which functions at territorial level.

(7) The Section for fighting corruption and organized criminality within the Prosecutor's Office by the Supreme Court of Justice, as well as the corresponding territorial structures, shall also carry out operations of centralizing, analyzing and turning to good account the data and information held by them or received from the other organisms involved in the fight against corruption and organized criminality, thus setting up a bank data in the field of the deeds of corruption and of organized criminality.

(8) The structure, as well as the personnel and positions establishment of the Section for fighting corruption and organized criminality within the Prosecutor's Office by the Supreme Court of Justice, of the territorial specialized services and bureaus shall be established under the terms of Law No. 92/1992 on judicial organization, republished, with the subsequent modifications.

Art. 29. – (1) For the trial of the crimes of corruption and of assimilated crimes, provided by the present law, specialized panels of judges may be set up, according to

art. 15 in Law No. 92/1992 on judicial organization, republished, with the subsequent modifications.

(2) The judges making up these specialized panels of judges, the public prosecutors that function within the Section for the fighting of corruption and organized criminality within the Prosecutor's Office by the Supreme Court of Justice, of the specialized territorial services and bureaus, as well as the persons stipulated in art. 28 para (4), (5) and (6) shall receive, besides the other pecuniary rights, and additional 30% of the basic salary.

Section 3

Common provisions

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

Art. 31. – The provisions of the present law are completed, with regard to the pursuit and judging, with the provisions of the Code of penal procedure.

CHAPTER V

Final provisions

Art. 32. – In the case of judicial documents concluded with the infringement of the provisions of the present law, the provisions of art. 14–22 in the Code of penal procedure are applicable.

Art. 33. – Any provision contrary to the present law is abrogated.

SUMAR

LEGE pentru prevenirea, descoperirea și sancționarea faptelor de corupție	5
CAPITOLUL I	
Dispoziții generale	5
CAPITOLUL II	
Reguli speciale de comportament privind anumite categorii de persoane, în scopul prevenirii faptelor de corupție.....	6
CAPITOLUL III	
Infracțiuni.....	7
<i>Secțiunea 1</i>	
Categoriile de infracțiuni	7
<i>Secțiunea a 2-a</i>	
Infracțiuni de corupție	7
<i>Secțiunea a 3-a</i>	
Infracțiuni asimilate infracțiunilor de corupție.....	8
<i>Secțiunea a 4-a</i>	
Infracțiuni în legătură directă cu infracțiunile de corupție	10
<i>Secțiunea a 5-a</i>	
Dispoziții comune	11
CAPITOLUL IV	
Dispoziții procedurale.....	12
<i>Secțiunea 1</i>	
Dispoziții generale	12
<i>Secțiunea a 2-a</i>	
Dispoziții speciale privind descoperirea și urmărirea infracțiunilor.....	12
<i>Secțiunea a 3-a</i>	
Dispoziții comune	16
CAPITOLUL V	
Dispoziții finale	16

SOMMAIRE

LOI sur la prévention, le dépistage et la sanction des faits de corruption	19
CHAPITRE I ^{er}	
Dispositions générales.....	19
CHAPITRE II	
Règles spéciales de conduite pour certaines catégories de personnes tendant à prévenir les faits de corruption ...	20
CHAPITRE III	
Infractions.....	21
<i>Section 1^{re}</i>	
Catégories d'infractions	21
<i>Section 2</i>	
Infractions de corruption.....	21
<i>Section 3</i>	
Infractions assimilées aux infractions de corruption	22
<i>Section 4</i>	
Infractions en relation directe avec les infractions de corruption...	24
<i>Section 5</i>	
Dispositions communes.....	26
CHAPITRE IV	
Dispositions procédurales	26
<i>Section 1^{re}</i>	
Dispositions générales.....	26
<i>Section 2</i>	
Dispositions spéciales concernant le dépistage et la poursuite des infractions	27
<i>Section 3</i>	
Dispositions communes.....	30
CHAPITRE V	
Dispositions finales.....	30

CONTENTS

LAW on preventing, discovering and sanctioning of corruption acts	33
CHAPTER I	
General provisions.....	33
CHAPTER II	
Special rules of conduct for certain categories of persons, for the purpose of preventing corruption acts.....	34
CHAPTER III	
Infractions.....	35
<i>Section 1</i>	
Categories of infractions.....	35
<i>Section 2</i>	
Corruption infractions	35
<i>Section 3</i>	
Infractions assimilated to corruption infractions	36
<i>Section 4</i>	
Infractions directly connected to corruption infractions	38
<i>Section 5</i>	
Common provisions.....	40
CHAPTER IV	
Procedural provisions	40
<i>Section 1</i>	
General provisions	40
<i>Section 2</i>	
Special provisions on discovering and pursuit of infractions	40
<i>Section 3</i>	
Common provisions.....	44
CHAPTER V	
Final provisions	44

Editor: Regia Autonomă „Monitorul Oficial“, București

Bun de tipar: 12 februarie 2001. Apărut: 2001

Tipografia „Monitorul Oficial“, București, str. Izvor nr. 2–4, Palatul Parlamentului, sectorul 5

E-mail: ramomrk@bx.logicnet.ro, Internet: www.monitoruloficial.ro
