

Regulations of 29 March 2017

Regulation on the performance of supervisory activity with respect to the non-transferability and incompatibility of appointments as well as compliance with rules of conduct by public officials

(published in Official Journal No. 91 of 19 April 2017)

THE AUTHORITY

HAVING SEEN Article 1, paragraph 2, clause d) of Law No. 190 of 6 November 2012 and subsequent modifications, according to which the National Anti-Corruption Authority (hereinafter the Authority) expresses binding opinions on directives and guidelines, as well as on the circulars of the Minister for the Public Administration and Simplification regarding the conformity of acts and conduct of public officials to the law, codes of conduct, and individual contracts and collective bargaining agreements regulating the public employment relationship;

HAVING SEEN Article 1, paragraph 2, clause e) of Law No. 190 of 6 November 2012 and subsequent modifications, according to which the Authority can express optional opinions on authorizations, in accordance with Article 53 of Legislative Decree No. 165 of 30 March 2001 and subsequent modifications, for administrative executives of the State and national public entities to carry out outside assignments, with specific reference to the implementation of paragraph 16-*ter*, introduced by paragraph 42, clause l), of such Article;

HAVING SEEN Article 1, paragraph 2, clause f) of Law No. 190 of 6 November 2012, according to which the Authority «exercises supervision and control on the actual implementation and effectiveness of the anti-corruption measures adopted by the public administrations and compliance with the rules on administrative transparency»;

HAVING SEEN Article 1, paragraph 3 of Law No. 190 of 6 November 2012, according to which the Authority «exercises powers of inspection powers through request for news, information, acts and documents from the public administrations and orders the adoption of acts or measures required by the National Anti-Corruption Plan, the plans to prevent corruption of the individual administrations and the rules on transparency of the administrative activity provided by outstanding law, or the termination of conduct or acts that conflict with the plans and rules on transparency»;

HAVING SEEN Legislative Decree No. 39 of 8 April 2013 establishing provisions on the non-transferability and incompatibility of assignments at public administrations and private entities with public control, in accordance with Article 1, paragraphs 49 and 50, of Law No. 190 of 6 November 2012;

HAVING SEEN Article 53, paragraph 16-*ter*, of Legislative Decree No. 165 of 30 March 2001, according to which «employees who, during the last three years of service, have exercised powers of authority or negotiating powers on behalf of the public administrations set forth in Article 1, paragraph 2, cannot perform work or professional activity with the private parties that were the object of the activities of the public administration carried out through such powers for three years following the termination of their public employment. The contracts stipulated, and appointments made in violation

of what is provided by this paragraph shall be void and the private parties who stipulated them or who made the appointments shall be prohibited from entering into contracts with the public administrations for the following three years, with the obligation to refund any remuneration received and verified as referring to them»;

HAVING SEEN Article 19, paragraph 5, clause a) of Law Decree No. 90 of 24 June 2014, according to which the Authority receives information and reports of unlawful conduct, including in the forms set forth in Article 54-*bis* of Legislative Decree No. 165 of 30 March 2001;

HAVING SEEN Article 19, paragraph 15 of Decree Law No. 90 of 24 June 2014, according to which «the functions of the Department of Public Office of the Presidency of the Council of Ministers on the prevention of corruption set forth in Article 1 of Law No. 190 of 6 November 2012 shall be transferred to the Authority»;

HAVING SEEN Legislative Decree No. 97 of 25 May 2016, which made changes regarding the prevention of corruption in the public administrations;

HAVING SEEN the National Anti-Corruption Plan, approved by the Authority by Resolution No. 72 of 11 September 2013 and subsequent updates;

HAVING SEEN Determination No. 833 of 3 August 2016 establishing «guidelines for the determination of the non-transferability and incompatibility of administrative appointments by the person in charge of the prevention of corruption. Supervisory activity and powers of verification of A.N.A.C. in the case of appointments that are non-transferable and incompatible»;

HAVING SEEN the Decree of the President of the Council of Ministers of 1 February 2016, which approved the Reorganization Plan of the Authority;

HAVING SEEN Resolution No. 1196 of 23 November 2016 on the «Reorganization of the National Anti-Corruption Authority after approval of the Reorganization Plan and new functions attributed with respect to public contracts and the prevention of corruption and transparency, and determination of centers of responsibility based on the Authority's institutional mission»;

HAVING SEEN Resolution No. 1306 of 21 December 2016 establishing the “Definition of the Authority's powers by subject and scope of activity/offices and attribution of coordination functions to the President and Board Members”;

HAVING SEEN the II level organizational act on «operational guidelines for the proper performance of activities and functional connection as implementation of Resolution No. 1196 of 23 November 2016»;

CONSIDERING the need to adapt the regime on the exercise of supervisory activity on non-transferability and incompatibility to the cited new legislation;

CONSIDERING the need to better specify, in view of the experience obtained in the first two years of supervisory activity, the Authority's role and powers;

CONSIDERING that the supervisory activity carried out by the Authority is not aimed at the precise verification of facts for purposes of personal liability, which is the competence of the judicial or administrative-accounting authority;

CONSIDERING that the activity carried out by the Authority serves the purpose of monitoring the proper granting of executive appointments and administrative responsibility at the top level in public administrations, public entities and publicly held private entities, as well as the impartiality of public officials, with particular reference to conflicts of interest and the limits set forth in Article 53, paragraph 16-ter, of Legislative Decree No. 165 of 30 March 2001;

ISSUES

The following Regulation

Article 1

(Definitions)

1. For purposes of this Regulation, these terms have the following meanings:

- a) «Authority», the National Anti-Corruption Authority;
- b) «President», the President of the Authority;
- c) «Board», the Authority's Board;
- d) «Office», the competent Supervisory Office for proceedings regarding the exercise of supervisory powers over the impartiality of public officials;
- e) «Manager», the Office Manager;
- f) «administration», the party, public administration or publicly held private entity, required pursuant to paragraph 2-bis of Article 1 of Law No. 190 of 6 November 2012 to adopt anti-corruption preventive measures, or, in accordance with Legislative Decree No. 39 of 8 April 2013;
- g) «RPCT», the person in charge of the prevention of corruption and transparency;
- h) «PNA», the National Anti-Corruption Plan.

Article 2

(Object)

1. This Regulation governs the proceedings of the Authority regarding the exercise of supervisory activity with respect to the non-transferability and incompatibility of appointments in the public administrations and publicly held private entities, in accordance with Legislative Decree No. 39 of 8 April 2013, as well as compliance with the rules on the impartiality of public officials.

Article 3

(Annual directive on the performance of the supervisory function)

1. The Supervisory activity shall comply with the guidelines, requirements and objectives indicated by the President and by the Board of the Authority.
2. Within 31 January of each year, the Board shall approve a programmatic directive that is also prepared in view of the dysfunctions discovered by the offices during the activity of the prior year.
3. The Board, on the basis of the programmatic directive, shall also approve the «Annual inspection Plan», carried out in accordance with the operational procedures contained in the «Guidelines for carrying out inspections», published on the Authority's institutional website.
4. The annual directive shall be published in a summary form, with an indication of the criteria with which the supervisory activity must comply, on the Authority's institutional website.
5. The Board can integrate the directive if it considers it necessary to indicate additional objectives or supervisory activities.

Article 4

(Automatic supervisory activity and supervisory activity based on reporting)

1. The Authority's supervisory activity shall be initiated by the competent Office, in accordance with the annual directive set forth in Article 3, or upon the initiative of the competent Office and by order of the Board.
2. Supervisory activity can also be initiated after reports submitted to the Authority in the manner set forth in Article 5.
3. In the case of a report by a public employee who reports unlawful activity (whistleblower), it will be dealt with by the competent Office in accordance with this Regulation and the guidelines adopted by the Authority for this kind of matter, in compliance with the protection of the confidentiality of the identity of the reporting party set forth in Article 54-bis of Legislative Decree No. 165 of 30 March 2001.

Article 5

(Manner in which the report is submitted)

1. The report set forth in Article 4, paragraph 2 shall normally be submitted using the form annexed to this Regulation, which is available on the Authority's institutional website and, ordinarily, sent in accordance with Article 21 of this Regulation.

2. The form set forth in paragraph 1 shall be completed in a clear manner in every mandatory field, together with any supporting documentation, signed and accompanied by an identification document or another valid document of the reporting party. The reporting party shall also indicate the address, preferably a certified email address, where any communications from the Authority can be sent.

3. If the form set forth in paragraph 1 is not used the report, signed and accompanied by a copy of an identification document or another valid document of the reporting party, must in any case indicate and document the relevant elements.

Article 6

(Anonymous reports)

1. For purposes of this Regulation the following reports shall be considered anonymous:

a) which are unsigned;

b) which have an illegible signature;

c) which, even though they apparently refer to a party, do not allow it/him to be identified with certainty.

2. Anonymous reports shall be filed by the Manager.

3. Anonymous reports that regard facts that are particularly significant or serious and which have adequately detailed information can be considered for purposes of supplementing the information in the possession of the Office while exercising its supervisory activity. The Office Manager can also propose to the Board that autonomous supervisory proceedings be initiated.

Article 7

(Archiving the reports)

1. The Manager shall archive the reports, in addition to in the cases set forth in Article 6, in the following cases as well:

a) evident groundlessness of the report;

b) generic content or mere reference to annexed documentation and/or correspondence between the parties;

c) the Authority's manifest lack of competence;

d) issues of a prevalently personal nature of the reporting party aimed at obtaining verification on the merits of his own subjective situation.

2. The archiving is communicated to the reporting party only in the case of an express written request.
3. The report shall be considered to have been archived if the Authority does not communicate the initiation of the proceedings within the terms set forth in Article 12, paragraph 2 of this Regulation.
4. The above is without prejudice to supervisory activity, including with reference to reports that have already been archived in accordance with the above paragraphs, in the case of intervening factors of fact or law or a different and further assessment by the Authority's Board.
5. In the cases set forth in paragraph 1, clause c), if the prerequisites have been satisfied, the Manager shall send the report to the competent Public Prosecutor's Office and/or to the Prosecutor's Office of the Court of Accounts.
6. The Manager shall send the Board, on a bimonthly basis, a list of the reports that have been archived in accordance with this Article.

Article 8

(Relationship between supervisory proceedings and proceedings in front of an administrative court)

1. The Manager can decide not to initiate supervisory proceedings in the case of a pending judicial petition in front of an administrative court having the same object, or to suspend them when they have been initiated. After the ruling has been made, the Manager shall evaluate whether the prerequisites exist to give new impulse to the supervisory proceedings.

Article 9

(Person in charge of the proceedings)

1. The Office Manager shall be the person in charge of the proceedings.
2. The person in charge of the proceedings, having reviewed the reports and given them the order of priority set forth in Article 10, paragraph 1, can select one or more officials to whom to entrust the preliminary investigation.

Article 10

(Order of priority of the reports)

1. The reports set forth in paragraph 2 of Article 4 shall normally be dealt with according to the following order of priority:
 - a) reports related to violations of Legislative Decree No. 39 of 8 April 2013, that can result in findings by the Authority of non-transferability and incompatibility;
 - b) reports that are relevant for purposes of codes of conduct;

c) reports of the unlawful making of an appointment after the termination of employment in accordance with Article 53, paragraph 16-*ter* of Legislative Decree No. 165 of 30 March 2001;

d) reports regarding facts having potential criminal relevance, with specific reference to crimes against the public administration;

e) reports regarding facts having potential administrative and accounting relevance, with specific reference to serious violations of law.

2. The reports regarding facts of criminal or accounting relevance can, upon communication by the Manager to the Board, be sent to the Public Prosecutor's Office and/or to the Prosecutor's Office of the Court of Accounts competent by territory, without prejudice to the aspects of interest to the Authority on which supervision continues to be exercised.

3. The reports, including those for which the Authority's intervention is no longer current and those missing the information set forth in Article 5, paragraph 2, or the documents and relevant elements set forth in Article 5, paragraph 3, shall be evaluated to identify dysfunctions in the application of the rules on the prevention of corruption. Such information is also relevant for purposes of preparing the programmatic directive set forth in Article 3, paragraph 2, and the Authority's consequent Inspection Plan, as well as the Authority's acts, proposals and annual Report.

4. The reports that are received that do not adhere to the forms set forth in paragraph 2 of Article 5 shall be considered as non-priority.

Article 11

(Conclusive acts of the supervisory proceedings)

1. The supervisory proceedings initiated in accordance with Article 12 shall conclude, unless in cases of archiving or acknowledgment of the administration's compliance with the Authority's indications, with the adoption, by resolution of the Board or by an executive act in the case of the simplified proceedings set forth in Article 19, with one of the following acts:

a) an act by which the Authority records that the administration has adopted, in the case under review, good administrative practices worthy of mention;

b) a recommendation in which it requests the administrations concerned to provide, in their codes of conduct, specific duties or prohibitions of behavior, including to prevent conflicts of interest from arising;

c) the submission of remarks and observations on acts making appointments that have not yet been perfected, in accordance with Article 16, paragraph 2, of Legislative Decree No. 39 of 8 April 2013;

d) an assessment of specific situations of non-transferability and incompatibility in accordance with Article 16, paragraph 1, of Legislative Decree No. 39 of 8 April 2013;

e) an assessment of situations of conflict of interest already provided by Codes of Conduct, whether national or of the individual administration concerned;

f) an assessment of a wrongful appointment after the termination of employment in accordance with Article 53, paragraph 16-*ter*, of Legislative Decree No. 165 of 30 March 2001;

g) an order to adopt acts and measures consequent to verification of situations of non-transferability/incompatibility in accordance with clause d) above.

2. Reports related to the failure to adopt Codes of Conduct by the administrations shall be dealt with exclusively during the proceedings to issue sanctions set forth in Article 19, paragraph 5, of Law Decree No. 90 of 24 June 2014, after being sent to the competent Office.

Article 12

(Initiation of the supervisory proceedings)

1. Notice of the initiation of the proceedings shall be made by the person in charge of the proceedings, and shall indicate the object of the proceedings, the information and/or documents deemed relevant, as well as, if possible, an indication of the alleged violations, the term for conclusion of the preliminary investigation, and the competent Office with an indication of the name of the person in charge of the proceedings.

2. The term for the communication of the initiation of the proceedings following a report is normally 60 days, starting from the date of its receipt.

3. When the prerequisites have been satisfied, the communication shall explicitly indicate that the proceedings can conclude with the adoption of an act verifying specific cases of non-transferability and incompatibility, as well as with verification of a wrongful appointment following the termination of employment in accordance with Article 53, paragraph 16-*ter*, of Legislative Decree No. 165 of 30 March 2001. In the cases in which the Office discovers, during the course of the preliminary investigation, the existence of elements that make it possible to conclude the proceedings with an act verifying specific cases of non-transferability and incompatibility, as well as with an act verifying a wrongful appointment following the termination of employment in accordance with Article 53, paragraph 16-*ter*, of Legislative Decree No. 165 of 30 March 2001, it will provide timely information to the parties through integration of the notice of the initiation of the proceedings.

4. The communication can be preceded by a request to the RPCT of the administration concerned, for information useful for the initiation of the proceedings.

5. The communication set forth in paragraph 1 shall be sent to the RPCT of the administration concerned, for those aspects for which he is competent, to the administration's legal representative, the parties concerned, the policy-making bodies that made or that intend to make the appointment, as well as to the reporting parties upon their request.

6. In the case of a significant number of recipients, the personal communication can be substituted by procedures established from time to time by the Authority.

7. The Manager shall send the Board a monthly list of the proceedings initiated in accordance with paragraph 1.

Article 13

(Participation in the preliminary investigation)

1. The following can participate in the preliminary investigation:

- a) the parties to whom notice of the initiation of the proceedings was sent in accordance with Article 12;
- b) other parties that have direct, concrete and current interests related to the object of the proceedings who make a reasoned request within 30 days of the notice of initiation of the proceedings, or from when they become aware of such proceedings.

2. The parties who participate in the preliminary investigation are entitled to:

- a) have access to the documents of the proceedings, in compliance with the terms and conditions set forth in the «Regulation on access to the documents created or held by the Authority in accordance with Law No. 241 of 7 August 1990», adopted on 31 May 2016;
- b) submit written briefs, documents, arguments and opinions, which shall be evaluated by the Office if pertinent to the object of the proceedings.

Article 14

(Request for information, clarifications and documents)

1. The Manager shall make written requests for information and the production of documents, which indicate:

- a) the facts and circumstances with respect to which clarifications are requested;
- b) the term within which the response must be received or the document produced; such term shall be established in relation to the urgency of the case, the quantity and quality of the information and the documents requested and shall not be less than 10 nor exceed 30 days.

2. The documents whose production is requested shall be provided, preferably, in an electronic format, with an annexed declaration of conformity to the original. Alternatively, they can be provided in original or as certified copies.

3. The requests for information and the production of documents can also be made verbally during the hearings or inspections, informing the party concerned and including in the record the same indications set forth in paragraph 2.

Article 15

(Hearings)

1. The Manager can summons to be heard the parties who were given notice of the initiation of the proceedings, in accordance with Article 12.
2. The parties who receive the notice of the initiation of the proceedings can submit to the Office, within 10 days from receipt, a request to be heard. The Manager, after positively evaluating the request, shall communicate the date of the hearing.
3. During the hearings, the parties who are summonsed can appear in the person of the RPCT, for those aspects for which he is competent, the legal representative or special legal representative having specific documentation demonstrating the power of representation and can also be assisted by consultants.
4. The hearing can be requested in front of the Board by the parties indicated in paragraph 2, in cases of proceedings for one of the measures set forth in Article 11, paragraph 1, clauses c), d), e) and f), limited to the cases of greatest importance. The request to be heard must specify the object of the verbal testimony and the reasons why it is deemed necessary. The President, after positively evaluating the request, shall establish the date of the hearing, and through the Board's Secretariat, shall order that it be communicated to the parties concerned.
5. A record shall be prepared of the hearings containing the principal statements made by the parties.

Article 16

(Inspections)

1. In the context of the supervisory proceedings, the Manager can request the Board to conduct inspections, to be conducted in the manner indicated in the Guidelines for conducting inspections that are published on the Authority's institutional website.
2. The inspection mandate shall be issued by a measure of the President, which shall indicate the composition of the inspection team, any collaboration with the Finance Police or other State bodies, the subjective context, and the object of the control.
3. Within the term assigned for the conclusion of the inspection, which in any case cannot exceed sixty days, the inspector shall prepare the report containing the results of the controls, which shall be timely sent to the Office that requested it for the subsequent formalities.

Article 17

(Suspension of the terms of the proceedings)

1. The terms of the proceedings, for matters of particular complexity, can be suspended just once, and, other than in the case set forth in clause b), for a duration not to exceed 30 days, in the following cases:

a) further clarifications by means of supplemental requests for documents from the parties or other Administrations or national and foreign Authorities;

b) inspections ordered in accordance with Article 16;

c) opinions to be obtained from other offices of the Authority, other Administrations or national and foreign Authorities.

2. In the case of requests for documents or the acquisition of opinions from other national and foreign Administrations and Authorities, the preliminary investigation can be concluded regardless of the information requested that has not been received within the period set forth in paragraph 1.

3. In the cases indicated in paragraph 1, the term shall start to run again, respectively, from the date of receipt or acquisition by the person in charge of the proceedings of the supplemental documentation, from the date of receipt of the inspection report, or from the date of receipt of the opinion requested.

4. The suspension of the term of the proceedings shall be communicated to the parties concerned.

Article 18

(Conclusion of the proceedings)

1. Within 120 days starting from the date of the notice of the initiation of the supervisory proceedings set forth in Article 12, except for application of the suspension set forth in Article 17, the Manager shall submit a draft resolution to the Board for approval whose object is the adoption of one of the acts set forth in Article 11.

2. The Manager can also issue a note whose object is the communication of acknowledgment of the intention expressed by the administration to comply with the requirements of outstanding law, with an indication of the acts that it intends to adopt, including those verifying situations of non-transferability or incompatibility.

3. The executive note set forth in paragraph 2 that concludes proceedings aimed at the adoption of one of the measures set forth in Article 11, paragraph 1, clauses c) d) and f) by the Authority shall be subject to prior authorization by the Board.

4. The Manager shall submit to the Board a monthly list of the notes issued in accordance with paragraph 2.

Article 19

(Proceedings in a simplified form)

1. The proceedings shall conclude in a simplified form when:

a) there are no interpretative doubts, considering the legislative and legal framework of reference;

b) it is possible to apply a precedent issued by the Authority to the case at hand.

2. In the cases set forth in paragraph 1, the Manager shall adopt his final act in the proceedings that substitutes the communication of the initiation of the proceedings set forth in Article 12.

3. The executive acts concluding the proceedings in a simplified form by means of which one of the measures set forth in Article 11, paragraph 1, clauses c), d), e), and f) shall be adopted after authorization by the Board.

4. The executive acts set forth in paragraph 3, prior to their final adoption, shall be communicated to the administration, establishing a term not to exceed 10 days for the presentation of counter-arguments.

5. The Manager, other than the cases set forth in paragraph 3, shall inform the Board monthly of the proceedings that have concluded in accordance with this Article.

Article 20

(Communication of the act adopted and verification of its implementation)

1. The conclusive acts of the proceedings, adopted by a Board resolution or an executive act concluding the proceedings in a simplified form, shall be communicated to the RPCT, the administration concerned as well as to the parties who made the report and shall be published on the Authority's institutional website. The Board can also order publication on the website of the administration concerned.

2. The administration concerned must communicate its acknowledgement of receipt to the Authority within the assigned term, which can vary from a minimum of 20 to a maximum of 45 days from receipt of the resolution.

3. In the case of a failure to communicate acknowledgment of receipt within the term set forth in the above paragraph, the Board, upon a proposal by the Manager, shall adopt an act attesting the failure of the administration to comply with the Authority's act. The act shall be published on the Authority's institutional website. In the case of the administration's failure to comply with an act of the Authority attesting specific cases of non-transferability/incompatibility, the Board can adopt an order in accordance with Article 11, paragraph 1, clause g). In this case, as in the other cases of the administration's failure to comply, the Authority can order the publication of the statement of findings also on the website of the administration concerned.

Article 21

(Communications)

1.L The reports to the Authority and the communications provided by this Regulation shall be sent, except in the case of specific needs of the proceedings, by certified email in accordance with outstanding law.

Article 22

(Transitory and final provisions)

1. This Regulation shall also apply to reports that have already been received by the Authority, for which supervisory proceedings have not yet been initiated as of the date of its entry into force.
2. Upon the entry into force of this Regulation, Resolution No. 146 of 18 November 2014 on the «Procedure for the approval of an order» shall not apply to supervisory proceedings governed by this Regulation.

Article 23

(Entry into force)

1. This Regulation shall enter into force the day following the date of its publication in the Official Journal.

Approved during the hearing of 29 March 2017.