

Regulations of 29 March 2017

Regulation on the performance of supervisory activity to prevent corruption

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

THE AUTHORITY

HAVING SEEN Article 1, paragraph 2, clause f) of Law No. 190 of 6 November 2012 and subsequent modifications, pursuant to which the National Anti-Corruption Authority (hereinafter “Authority”) shall supervise and control 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, pursuant to which the Authority has powers of inspection through requests for news, information, acts and documents from public administrations and may order the adoption of acts or measures required by the national anti-corruption plan, the corruption prevention plans of the individual administrations and the rules on the transparency of administrative activity provided by outstanding law, i.e. the removal of conduct or acts that conflict with the plans and rules on transparency;

HAVING SEEN Article 19, paragraph 5, clause a) of Law Decree No. 90 of 24 June 2014, converted with modifications in Law No. 114 of 11 August 2014, which attributes the Authority with responsibility for receiving notices and reports of wrongful conduct;

HAVING SEEN Legislative Decree No. 97 of 25 May 2016, which modified the regime on the prevention of corruption in public administrations;

HAVING SEEN the National Anti-Corruption Plan and subsequent updates, set forth in Article 1, paragraph 2-*bis* of Law No. 190 of 6 November 2012 and subsequent modifications;

HAVING SEEN the Decree of the President of the Council of Ministers of 1° February 2016, which approved the Reorganization Plan for the National Anti-Corruption Authority;

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

HAVING SEEN Resolution No. 1306 of 21 December 2016 on the «Determination of the functions of the Authority on matters and the scope of activities/offices and attribution of coordination functions to the President and to Board Members»;

HAVING SEEN the organization act of the II level “Operating Guidelines for the proper performance of activities and functional connection as implementation of Resolution No. 1196 of 23 November 2016»;

CONSIDERING the need to adjust the regime on anti-corruption supervisory activity with respect to the cited new legislation;

CONSIDERING the need to better specify, in view of the experience of the first two years of supervisory activity, the role and powers of the National Anti-Corruption Authority;

CONSIDERING that the supervisory activity performed by the Authority is not aimed at the precise verification of facts for purposes of determining personal liability, which is the responsibility of the Judicial or Administrative-Accounting Authority;

CONSIDERING that the purpose of the supervisory activity performed by the Authority is to determine, including based on the reports received, the areas of administrative activity that are most greatly exposed to the risk of corruption, as well as to give adequate support to the administrations and other parties required to adopt and implement concrete measures to prevent corruption;

ISSUES

The following Regulation:

Article 1

(Definitions)

For purposes of this Regulation, the following terms shall 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 with respect to proceedings regarding the exercise of supervisory powers on the measures for the prevention of corruption;
- e) «Manager», the Office Manager;
- f) «administration», the party, public administration or publicly held private entity, required, in accordance with paragraph 2-*bis* of Article 1 of Law No. 190 of 6 November 2012, to adopt measures to prevent corruption;
- 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 Authority's procedures for the exercise of supervisory powers over the measures for the prevention of corruption set forth in Article 1, paragraph 2, clause f) of Law No. 190 of 14 November 2012.

Article 3

(Annual Directive on the performance of the supervisory function)

1. 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 consideration of any dysfunctions found by the offices during their activity the prior year.
3. The Board, based on the programmatic directive, shall also approve the «Annual Inspection Plan», to be carried out in accordance with the operational procedures contained in the «Inspection Guidelines» published on the Authority's institutional website.
- 4.The annual directive will be published on the Authority's institutional website in a summary format, with an indication of the standards with which the supervisory activity must comply.
- 5.The Board can supplement the directive if it deems necessary with additional objectives or supervisory acts.

Article 4

(Automatic supervisory activity and supervisory activity following a report)

- 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 or upon an order by the Board.
- 2.Supervisory activity can also be initiated after reports made to the Authority in the manner set forth in Article 5.
- 3.In the case of a report made by a public employee who reports wrongful activity (a whistleblower), it will be handled by the competent Office, in accordance with this Regulation and the guidelines adopted by the Authority regarding this matter, in compliance with protection of the confidentiality of the whistleblower's identity set forth in Article 54-bis of Legislative Decree No. 165 of 30 March 2001.

Article 5

(Reporting procedures)

1. The reports set forth in Article 4, paragraph 2 shall normally be made using the form annexed to this Regulation, 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 clearly with respect to every mandatory field, completed by any supporting documentation, signed and accompanied by a copy of an identity document or other valid document of the person making the report. The person making the report shall also indicate an address, preferably a certified e-mail address, that can be used for any communications from the Authority.

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 other valid document of the person making the report, must nevertheless indicate and document the significant factors.

Article 6

(Anonymous reports)

1. For purposes of this Regulation, reports are considered anonymous which:

- a) are unsigned;
- b) have an illegible signature;
- c) even if they appear to refer to a person, do not allow such person to be identified with certainty.

2. Anonymous reports shall be archived by the Manager.

3. Anonymous reports that regard particularly significant or serious acts and which contain adequately detailed information can be considered for purposes of supplementing the information available to the Office in the exercise of its supervisory activity. The Office Manager can also propose to the Board that it initiate autonomous supervisory proceedings.

Article 7

(Archiving the reports made)

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) the report is clearly groundless;
- b) the content is generic or a mere referral to annexed documentation and/or correspondence between the parties;
- c) the Authority clearly lacks jurisdiction;

d) it regards issues of a prevalently personal nature of the reporting party aimed at obtaining verification of the merits of such party's own subjective situation.

2. The archiving of the matter shall be communicated to the reporting party only in the case of express written consent.

3. The report shall be considered to have been archived if the Authority does not notify 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 were already archived in accordance with the above paragraphs, in the case of intervening factual elements or of law, or in the case of a different and further assessment by the Authority's Board.

5. In the cases set forth in paragraph 1, clause c), if the prerequisites are satisfied, the Manager shall send the report to the competent Public Prosecutor's Office of the Republic and/or to the Prosecutor's Office of the Court of Audit.

6. The Manager shall send the Board the list of the reports that have been archived pursuant to this Article every two months.

Article 8

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

1. The Manager cannot initiate the supervisory proceedings if a complaint is pending in front of an administrative court that has the same object, or shall suspend them if such proceedings have already initiated. Once the judgment has been issued, the Manager shall evaluate whether the prerequisites have been satisfied to re-initiate the supervisory proceeding.

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 attributing them with the order of priority set forth in Article 10, paragraph 1, can select one or more officials to entrust with the preliminary investigation.

Article 10

(Order of priority of the reports)

1. Unless in the case of a different indication from the Board, the reports shall be processed in accordance with the following order of priority:

- a) reports related to violations of law that could result in measures or a report by the Authority;
 - b) reports that submit questions of particular significance from the standpoint of the specific exposure of the administration at risk of corruption;
 - c) reports concerning acts having possible criminal relevance, with specific reference to crimes against the public administration;
 - d) reports concerning acts having possible administrative and accounting relevance, with specific reference to serious violations of law.
2. The reports concerning criminal or accounting acts can be sent, upon communication by the Manager to the Board, to the Public Prosecutor's Office of the Republic 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 with respect to which the supervision should continue.
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 significant factors set forth in Article 5, paragraph 3, shall be assessed in order to determine dysfunctions in the implementation of the rules on the prevention of corruption. Such information is also significant for purposes of the preparation of the programmatic directive set forth in Article 3, paragraph 2 and the consequent Inspection Plan of the Authority as well as the Authority's acts, proposals and Annual Report.
4. The reports received that do not comply with the indications forth in paragraph 2 of Article 5 shall be considered non-priority.

Article 11

(Final acts of the supervisory proceedings)

1. The supervisory proceedings, initiated in accordance with Article 12, shall conclude, except in the case of the archiving or acknowledgment of the administration's compliance with the Authority's indications, with the adoption, by means of a Board resolution or an executive act in the case of the simplified proceedings set forth in Article 19, of one of the following acts:
- a) an act in which the Authority records that the administration, in the case under review, has adopted good administrative practices that are worthy of mention;
 - b) a recommendation to the administration concerned to adopt measures to prevent corruption to be included in the Anti-Corruption and Transparency Plans (PTPCT);
 - c) a report made to the policy body of the administration concerned of acts or events that can result in the liability set forth in paragraphs 12 and 14 of Article 1 of Law No. 190 of 2012;
 - d) an order to the administrations concerned to adopt the anti-corruption measures provided by the PNA and its updates, as well as by Guidelines having the same value as the guidelines in accordance with paragraph 2-*bis* of Article 1 of Law No. 190 of 2012;

e) an order to the administrations concerned to adopt implementing acts and measures related to the measures to prevent corruption included in the PTPCT, or to annul acts and measures that conflict with such provision, in accordance with paragraph 3 of Article 1 of Law No. 190 of 2012.

2. The reports related to the failure to adopt the PTPCT, including the relative sections dedicated to transparency, the failure to adopt the supplementary measures of the organizational model set forth in Legislative Decree No. 231 of 8 June 2001, as well as the failure by the administrations to adopt Codes of Conduct shall be dealt with exclusively in the proceedings for the issue of the sanctions set forth in Article 19, paragraph 5 of Law Decree No. 90 of 24 June 2014.

Article 12

(Initiation of the supervisory proceedings)

1. The notice of the initiation of the proceedings shall be made by the person in charge of the proceedings and must indicate the object of the proceedings, the information and/or documents deemed to be relevant as well as, when possible, the alleged violations, the term for the 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 notice of the initiation of the proceedings after a report, starting from the date it is received, is usually 60 days.

3. The notice shall expressly indicate, if the conditions have been satisfied, that the proceedings can be concluded by an order or a report. In cases in which the Office finds during the preliminary investigation that factors exist that render the conclusion of the proceedings possible by an order or a report, it will timely inform the parties by supplementing the notice that initiated the proceedings.

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

5. The notice referred to in paragraph 1 shall be sent to the RPCT for the aspects for which it is responsible, as well as to the legal representative of the administration concerned.

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

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

Article 13

(Participation in the preliminary investigation)

1. The following can participate in the preliminary investigation:

a) the parties to whom the notice of initiation of the proceedings was sent in accordance with Article 12, paragraph 5;

b) other parties who have direct, concrete and current related interests in the object of the proceedings, who make a reasoned request within 30 days from the notice of the initiation of the proceedings or from when they become aware of them.

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

a) review the documents of the proceedings in accordance with the terms and procedures set forth in the «Regulation on access to the documents created or held by the Authority pursuant to Law No. 241 of 7 August 1990», approved on 31 May 2016;

b) submit written briefs, documents, deductions and opinions, which are assessed by the Office if relevant to the object of the proceedings.

Article 14

(Request for information, clarifications and documents)

1. The person in charge of the proceedings shall formulate written requests for information and the production of documents, which indicate:

a) the facts and circumstances for which clarifications are requested;

b) the period within which the response must be submitted, 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 documents requested and shall not be less than 10 nor more than 30 days.

2. The documents that must be produced should preferably be provided in an electronic format, with an annexed declaration of conformity to the original. Alternatively, they can be provided in original or as a certified copy.

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

Article 15

(Hearings)

1. The Manager can summons to be heard the parties who have been notified of the initiation of the proceedings pursuant to Article 12.

2. The parties who receive the notice of the initiation of the proceedings may, within 10 days of receipt, submit a request to be heard to the Office. The Manager, after positively evaluating the request, shall communicate the date of the hearing.
3. During the hearings, the parties who have been summonsed can appear in person or in the person of the RPCT, for the aspects of competence, or their legal representative or special legal representative having specific documentation demonstrating the power of representation, and they can also be assisted by consultants.
4. The hearing can be requested in front of the Board by the parties set forth in paragraph 2, in cases of proceedings for the issue of an order or report. The request to be heard must specify the object of the oral testimony and the reasons why it is necessary. The President, after positively evaluating the request, shall establish the date for the hearing and, through the Board's Secretariat, shall order that it be communicated to the parties concerned.
5. A record shall be made of the hearings containing the principal statements made by the parties.

Article 16

(Inspections)

1. In the context of the supervisory proceeding, the Manager can request the Board to conduct inspections, 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 initiation of collaboration with the Finance Police or other State body, 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 a 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 term of the proceedings)

1. The term of the proceedings, in the case of issues of particular complexity, can be suspended just once, and, aside from the case set forth in clause b), for a duration that cannot exceed 30 days, in the following cases:
 - a) further clarifications by means of additional 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 administrations or national and foreign Authorities, the preliminary investigation can be concluded regardless of the information requested that is not 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 that was 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 from the date of the notice of the initiation of the supervisory proceedings set forth in Article 12, unless the suspension set forth in Article 17 is applied, 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 his own note communicating acknowledgment of the will expressed by the administration to comply with the requirements of outstanding law, with an indication of the measures which it intends to implement.

3. The executive note set forth in paragraph 2 that concludes proceedings initiated for the adoption of an order or a report of the Authority shall be subject to prior authorization by the Board.

4. The Manager shall provide the Board with a monthly list of the notes approved in accordance with paragraph 2.

Article 19

(Simplified proceedings)

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

- a) there are no interpretive doubts, considering the legislative and legal framework of reference;
- b) it is possible to apply a precedent decided by the Authority to the case at hand.

2. In the cases set forth in paragraph 1, the Manager shall issue his own act concluding the proceedings, which substitutes the notice of the initiation of the proceedings set forth in Article 12.
3. The executive acts that conclude the proceedings in a simplified form with an order or report issued by the Authority shall be adopted after authorization by the Board.
4. The executive acts set forth in paragraph 3, before their final adoption, shall be communicated to the administration, establishing a term not to exceed 10 days for the presentation of counter-arguments.
5. Other than the cases set forth in paragraph 3, the Manager shall inform the Board monthly of the proceedings concluded in accordance with this Article.

Article 20

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

1. The final acts of the proceedings, adopted by a resolution of the Board or by an executive act concluding the proceedings in a simplified form, shall be communicated to the RPCT, the administration concerned and to the parties who submitted the report and shall be published on the Authority's institutional website. The Board can also order the publication on the website of the administration concerned.
2. The administration concerned is required to communicate its response to the Authority within the assigned term, ranging from a minimum of 20 through a maximum of 45 days from receipt of the resolution, in which it states which acts it intends to adopt, and within what period.
3. In the case of a failure to reply within the term set forth in this paragraph, the Board, upon a proposal of the Manager, shall adopt a report of its finding that the administration has failed to comply with an act of the Authority. The report shall be published on the Authority's institutional website. In the case of the administration's failure to comply with an order of the Authority, the Board can order the publication of the report with the finding even on the website of the administration concerned.

Article 21

(Communications)

1. The reports sent 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

(Temporary and Final Provisions)

1. This Regulation shall also apply to the reports already received by the Authority, for which the supervisory proceedings have not yet initiated on the date of its entry into force.

2. With effect from the entry into force of this Regulation, Resolution No. 146 of 18 November 2014 “Procedure for the adoption of an order” shall no longer be applied to the supervisory proceedings governed by this Regulation.

Article 23

(Entry into force)

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

Approved at the hearing of 29 March 2017.