RESEARCH ARTICLE:

Managerial liability in promoting integrity in public entities – Analysis of the legal framework

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ABSTRACT

Romania is currently to its fifth National Anti-Corruption Strategy (NAS), the first such document being adopted in 2001.

This analysis addresses the case of public authorities, institutions and enterprises in a broad sense, without approaching particular situations, such as the courts, or those categories of staff in public authorities and institutions that enjoy special statutes.

KEYWORDS: *strategy, anti-corruption, control and duties.*

1.Introduction

Romania is currently to its fifth National Anti-Corruption Strategy (NAS), the first such document being adopted in 2001. All these public policy documents have continuously evolved in the direction of their progressive improvement, both from the perspective of their formulation and structuring, as well as from the perspective of the obtained results. Hesitations consisted primarily in developing these documents rather as visionary documents, and less as programmatic documents with measurable performance and impact indicators. This approach did not give them legal force of its own, but was based mainly on the common law liability system.

Moreover, at the adoption date of the first anti-corruption strategy in 2001, in Romania the criminal liability of legal persons were still not governed, which has been done only in 2004 when included into the Criminal Code, just as at that time there was no concrete concern about companies' involvement in efforts to prevent and combat corruption. However, it is noteworthy that a particularly important part of the legislation currently underpinning corruption prevention efforts was adopted under the aegis of the National Program for Prevention of Corruption and the National Action Plan Against Corruption 2001-2004[1] - the first of these strategies.

On the other hand, the last two Strategies[2] bring into attention three key principles for the success of anti-corruption endeavouring namely: the principle of responsibility or liability according to which "the state authorities are responsible for the fulfilment of their tasks, respectively for the implementation and effectiveness of the strategies"; "the principle of responsible management of the risks due to integrity-lacking behaviours as an integral part of the managerial process conducted by each organization", as well as "the principle of responsibility at the highest level of commitment". Anti-bribery policies will not be effective unless there is a clear message from the top-level administration that bribes are not tolerated. The top level of leadership on each level of the administration should initiate, supervise and lead, by the power of own example, the implementation of a policy of rejecting corruption, recognizing that bribery is contrary to the fundamental values of integrity, transparency and accountability, undermining thus the organizational effectiveness.

The already mentioned two strategies add to the three key principles for the anti-corruption successfully endeavouring, a new concept, that of managerial failure, to which are attached any new National Anticorruption Directorate (DNA) or National Integrity Agency (ANI) files at the level of the affected public institution. At the same time, the 2016-2020 Strategy also defines the concept of legal standards of integrity, also used by the previous Strategy, as "those measures of institutional transparency and corruption prevention enshrined in the national law and reflected in the inventory attached to

[1]Approved in October 25, 2001 by Government Decision no. 1065: http://sna.just.ro/Portals/0/HG%201065%20din%202001.pdf

[2]The 2012-2015 Strategy approved by GD no. 215/2012 on the endorsement of the Anti-Corruption National Strategy for 2012-2015, of the Inventory of Preventive Anti-Corruption Measures and of the Evaluation Indicators, as well as of the National Action Plan for implementing the National Anti-Corruption Strategy for 2012-2015. The 2016-2020 Strategy approved by the GD no. 583 of 10 August 2016 on the endorsement of the National Anti-Corruption Strategy for 2016-2020, of the performance indicators sets, of the risks associated with the objectives and measures of the strategy and of the verification sources, of the list of measures for institutional transparency and corruption prevention measures inventory, of the evaluation indicators, as well as of the standards for the public interest information publication.

NAS".

Taking into account that the National Anticorruption Strategy 2016 - 2020 lists a set of integrity standards, that need to be implemented by institutional managers, much more extensive than those elements that can lead to constituting a new ANI's or DNA's file, the aim of this study is to clarify in connection to these two definitions, the content of the concept of managerial failure and what are the forms the managerial responsibility may take in such situations. To uphold of this approach it is worth noting the definition provided by Order no. 400/2015 for the managerial responsibility concept. According to it, the managerial responsibility "defines a relationship of legal obligation to carry out the due tasks by the manager of a public entity or of one of its organizational structure, assuming exercising the management within the limiting internal and external determinations for effectively achieving the objectives set efficiently and according with legal compliance, as well as to communicate and respond for the non-fulfilment of managerial obligations in accordance with the *legal liability*". The managerial responsibility derives from the manager's responsibility for all five components of managerial internal control in the public sector: the control environment; the performance and the risk management; the control activities; information and communication; evaluation and audit ".

This analysis addresses the case of public authorities, institutions and enterprises in a broad sense, without approaching particular situations, such as the courts, or those categories of staff in public authorities and institutions that enjoy special statutes.

2.Management control

According to the normative framework in force, the concept of managerial liability is closely linked to those of internal control and preventive financial control. Thus, the GO no. 119/1999, in its 2003 republished format discusses in art. 8, paragraph (4) on the gradual integration of preventive financial control in the sphere of managerial responsibility.

It is just in 2010, through the GO 119/1999 modification by the Law no. 234/2007, that the managerial internal control is defined as representing "the ensemble of all forms of control exercised at the level of the public entity, including the internal audit established by the management in accordance with its objectives and legal regulations, in order to ensure the economical, efficient and effective management of the funds; this also includes the organizational structures, the methods and procedures", but without any further clarification on what means the managerial responsibility. This definition is complemented by the Order 400/2015, where the term "internal managerial control" is clarified in the sense that it is emphasized the responsibility of all hierarchical levels for controlling all internal processes carried out to achieve the general and specific objectives.

In accordance with art. 3 of the GO 119/1999 the objectives of the internal managerial control are the followings:

- the achievement, at an appropriate level of quality, *of the tasks of the public entity established in accordance with their own mission*, in conditions *of regularity, effectiveness, economy and efficiency*;
- protecting public funds against losses due to error, squandering, abuse or fraud;
- *compliance with the law, the regulations and management decisions*;
- development and maintenance of systems for the collection, storage, processing, updating and dissemination of financial and managerial

information, as well as systems and procedures for adequate public information through regular reports.

Art. 4 of the same normative act establishes the obligation of the head of the public entity to ensure the development, approval, application and improvement of organizational structures, methodological regulations, procedures and evaluation criteria to meet the general and specific requirements of managerial internal control.

We make it clear in this context that the legal text in force includes in its Art. 3 reference on public institutions, not public entities. From the historical analysis of this regulation, it is worth noting that the originally adopted text was referring only to the notion of a public institution. Afterwards, through the Law no. 84/2003 are clearly defined the public institutions and public entities, but in art. 3 and 4 reference continue to be made only to the public institutions. Only in March 2015, through GEO no. 2 this error of legislative technique is partially corrected, so that Art. 4 deals with the obligations of the heads of public entities, not just those of public institutions. The reference in art. 3 however remains limited only to public institutions. Based on the systematic analysis of the legal text and by considering that the consolidated version of GO 119/1999 is the result of repeated changes thereof, in our opinion in art. 3 the reference is also made to public entities and not only to public institutions. In support of this interpretation is art. 26, according to which "the provisions of this Ordinance shall also apply to legal persons other than public institutions if such legal persons manage public funds of any title and/or administer the public patrimony regarding the public funds management and administration of the public patrimony concerned". These provisions, corroborated with the mentioned texts and definitions set out in art. 2 at point m and n support our conclusion regarding the scope of GO no. 119/1999[3] in its consolidated form.

According to that by public entity is meant "the public authority, the public institution, state owned company/ society, commercial company to which the state or an administrative-territorial unit is a majority shareholder, with legal personality, which uses/ manages public funds and/ or public patrimony". By public institution is meant "the Parliament, the Presidential Administration, ministries, the other specialized bodies of the public administration, other public authorities, autonomous public institutions, as well as their subordinated institutions regardless of their financing", the connection between the two concepts being from general to specific.

Art. 4 of the GO no. 119/1999 further enumerates into the Paragraph (2) the general requirements for the internal managerial control in question:

- ensuring the fulfilment of the general objectives stipulated in Art. 3 by systematically assessing and maintaining to a considered acceptable level the risks associated with the structures, programs, projects or operations;
- provisioning a cooperative attitude of the managerial and executive personnel, having the obligation to respond at any time to the management's requests and to effectively support the managerial internal control;
- ensuring the integrity and competence of management and executives, the knowledge and understanding of the importance and role of managerial internal control by them;
- establishing *the specific objectives of managerial internal control*, so that they are appropriate, comprehensive, reasonable and *integrated with the institution's mission*

[3] http://legislatie.just.ro/Public/DetaliiDocument/166435

and overall objectives;

- continuous supervision by the management personnel of all activities and the fulfilment by the management staff of the obligation to act correctively, promptly and responsibly whenever violations of the legality and regularity are found in the performance of operations or the performing of activities in non-economic way, ineffective or inefficient.

Specific requirements for managerial internal control include:

- reflection by written documents of the organization of managerial internal control, of all the operations of the institution and of all significant events, as well as the proper recording and keeping of the documents so that they are readily available for examination by the entitled personnel;
- prompt and correct recording of all significant operations and events;
- ensuring the approval and performance of operations exclusively by persons specifically empowered to do so;
- separation of duties to carry out operations between persons so that the tasks of approval, control and registration are, to an appropriate extent, entrusted to different persons;
- ensuring competent leadership at all levels;
- accessing of resources and documents only by the persons entitled and responsible for their use and preservation.

The Paragraph (3) of the same art. 4 includes, as a charge of the *head of the public entity*, a new obligation, namely to prepare an annual report on the system of internal managerial control, which is presented as an annex to the financial statement of the ended year budget.

These provisions need to be correlated with those of the Art. 27, Letter J of the GO no. 119/1999, according to which "the failure by the authorizing officer to fulfil his obligation to elaborate and present the annual report on the system of internal managerial control provided in art. 4 paragraph (3)". The Law no. 234/2010, which is the same with that who introduces the concept of internal managerial control, introduced this provision in the normative act but it goes beyond the harmonization effort made by GEO no. 2/2015. Thus, as can be seen, the text has remained unchanged, referring to the authorizing officers, while the article to which it refers, respectively the Art. 4 (3) refers to the obligations of the head of a public entity.

We turn once again to the systematic interpretation of the text. Thus, in addition to the above-mentioned explanation, we will refer to the definition formulated even by Art. 2 of the GO no. 119/1999 at point, according to which the authorizing officer is "the person empowered by law or by delegation, according to the law, to order and approve operations", where by operations it is meant "any actions having a financial effect on public funds or public assets, whatever their nature". We will understand over again that art. 27 point of the GO 119/1999 refers to the leaders of the public entities, according to the public entities definition established by the same normative act.

Based on the full-length analysis of the above-mentioned normative act we can conclude that the managerial responsibility assumes applying the sanctions provided by Art. 27 point j - respectively that it is sanctioned as a contravention the act which is not committed in such a way that, the failure of the authorizing officer to fulfil his obligation to elaborate and present the annual report on the system of internal managerial control, to represent a criminal offense according to the criminal law.

In our opinion such conclusion cannot be sustained in all respects, as long as the referred sanction exclusively addresses the failure to produce and present the annual report, once that for such a report to be elaborated, the Art. 3 and 4 of Government Ordinance no. 119/1999 stipulate that the heads of the public entities are obliged to elaborate, to approve, apply and improve

the internal managerial control system, but the normative act does not provide any sanctions for the failure to fulfil these obligations. The understanding that the sanction provided by art. 27 point would also be applicable in these situations cannot be accepted as long as, according to the practice of the European Court of Human Rights, the normative texts laying down criminal and contravention sanctions are interpreted and applied strictly.

This situation brings us to analysing what actually is the content of the managerial obligations, what are the specific penalties applicable to each one of those obligations and how they are incidental to the legal status of the person in charge of the leading position of a public entity. As already mentioned at the beginning of this paper, we will confine ourselves to analysing the elements that can assume managerial accountability in the matter of preventing and combating corruption.

3.Managerial duties

Further analysing the provisions of art. 3 of the GO 119/1999, the first of the objectives of the internal managerial control is related to the achievement of the purpose of the public entity itself, the goal which, as we have shown in a previous work[4], is indissolubly linked to the very existence of the entity as a legal person. Thus, "*to act as a legal entity, an entity must have a self-standing organization and its own patrimony intended for achieving a certain* ***licit and moral purpose****, in accordance with the general interest*"[5]. The achievement of this goal must be done, according to the quoted text, in regularity conditions, respectively by respecting the law, the regulations and the management decisions.

We see that, according to art. 2 points of the GO no. 119/1999, by regularity it is understood "the characteristic of an operation of observing all the aspects of the *ensemble of principles and procedural and methodological rules* that apply to the category of operations to which it belongs", while the compliance term represents the "characteristic of an operation, acts or administrative facts produced within a public entity *to correspond to the policy expressly assumed in that field* by the entity in question or by a higher authority thereof, according to the law". This second part of the definition of conformity overlaps the third objective of managerial internal control, so we can conclude that one of the objectives is to ensure the compliance of the operations, acts and administrative facts of a public entity.

It follows that, according to art. 4 of the same normative act, the head of a public entity has the obligation to ensure the elaboration, approval, application and improvement of the organizational structures, methodological regulations, procedures and evaluation criteria, in order to ensure the achievement of the objectives of the internal managerial control, both through measures aimed at implementing the established rules for that entity, as well as by deeds for determining and motivating the staff to adhere to the rules and also to participate in their implementation[6].

The art. 5 (2^1) of the GO no. 119/1999 established the responsibility of the Government General Secretariat to elaborate and implement the policy in the field of managerial internal control's systems. The fulfilment of this obligation materialized in the elaboration and adoption of the Government General Secretariat Order no. 400/2015.

According to art. 2 of the latest mentioned normative act, "the head of each public entity, taking into account the particularities of the legal framework of

[4]Administrative capacity article.
[5]Art. 187 Civil Code.
[6]Conformity article.

organization and functioning, as well as the internal managerial control standards, establishes the control measures necessary for the implementation and development of the managerial internal control system, including the updating of risk registers and the formalized procedures on processes or activities, which may be system procedures and operational procedures". This obligation is correlated to the one established by Art. 4 of the GO no. 119/1999 and must be corroborated with the Art. 82, "the internal managerial control is the responsibility of the heads of public entities, who have the obligation to design, implement and develop it continuously". To entrust to some third parties to carry out activities related to the implementation and development of the management system of the public entity assumes that in this situation the leader of the public entity does not fulfil its own tasks with good results. Although unclear, this article may also be understood as a misconduct of the heads of public entities when they fail to fulfil their due obligations according to the applicable legal framework.

Based on the systematic analysis of the normative act and by taking into account the provisions of the GO no. 119/1999, we consider that the most comprehensive reference to the obligations of the management of a public entity is that of Point 1.6 of the Code of Internal Managerial Control of the Public Entity, those focusing specifically on the "internal management control system organization", for which there are reformulated and systematized the objectives set out in Art.3 of the GO no. 119/1999. Thereby, "the organization of the internal managerial control system of any public entity envisages the achievement of three categories of permanent objectives", namely:

- objectives related to the functioning effectiveness and efficiency - these include the goals related to the public entity's purposes and those devoted to the economical, effective and efficient use of all the available resources, also including the objectives on protecting resources of the public entity against using them inappropriately or wasting them, as well as the liabilities identification and management;
- objectives bounded to the external and internal information reliability - these include the goals related to maintaining appropriate accounting, the quality of information used in the public entity or disseminated to third parties, as well as the objectives related to the documents protection against two categories of fraud: the fraud concealment and results distortion;
- objectives with regard to the conformity with domestic laws, regulations and policies - these include the objectives on ensuring that the entity's activities are carried out in accordance with the obligations imposed by the laws and regulations, as well as with respect for internal policies.

The Internal Management Control Code of the Public Entity reiterates in its point 2.3. The fact that "the establishment of the system of internal managerial control falls under the responsibility of the management of each public entity and must be based, under the law, on the internal control standards promoted by the Government General Secretariat", where "the internal management control standards define a minimum of management rules, which all public entities have to follow", according to point 2.1.

„Each control standard is structured on three components:

- description of the standard - which presents the defining features of the management domain to which the standard refers, the field set by its title;
- general requirements – which presents the directions in which action must be taken for complying with the standard;

- main references - which list the representative normative acts, which contain regulations applicable to the standard but, are not exhaustive"[7].

Following, we will refer in particular to the latter objective, that of the conformity with domestic laws, the regulations and internal policies, from the point of view of the efforts to ensure the integrity in public entities, namely the Standard No. 1 on Ethics and Integrity and Standard No. 12 on Information and Communication.

The requirements of the two standards describe several obligations for the heads of public institution. These include on one hand the implementation of the key references, but also new obligations, explicitly covered by general requirements such as the adoption of an ethical code / code of conduct, the development and implementation of policies and procedures on integrity, ethical values and transparency. This obligation to develop policies and procedures finds its equivalent in the obligation laid down by various normative acts to harmonize or attune the Regulations of Organization and Functioning or the Internal Regulations to the respective legal provisions, a prerogative that belongs exclusively to the chief executive of the public entity.

When corroborating the provisions of the conformity objective with the laws with the main references of the Standard No. 1 and with the statement that these references are not exhaustive, it is understood that are managerial obligations for ensuring the integrity of the public entity, the accomplishment of all requirements related to the application of laws and the other listed normative acts, respectively those obligations linked to the provision of the institutional framework and the organization of implementation of these normative acts. Annexed to this paper the author presents an inventory of the main obligations to be imposed on the heads of public entities regarding the concrete application of the public integrity measures.

Public entities leaders whose managerial liability can be committed for non-organizing the managerial internal control system

1. Heads of the central government institutions

As already mentioned, the GO no. 119/1999 uses the terminology of the leader of the public entity, but does not define the notion. In the legislative act, however, reference is made to the authorizing officer - the person authorized by law or by delegation, according to the law, to order and approve operations. This notion is used in the same sense as the leader of the public entity, as we have shown before in the systematic analysis of the legal text, and also as it follows.

Thereby - corroborating the provisions of GO 119/1999 with those of art. 20 of the Law no. 500/2002 regarding the public finances, "the main authorising officers are *the ministers, the heads of the other specialized bodies of the central public administration, the heads of other public authorities and the heads of the autonomous public institutions*. Added to them is the Government General Secretary according to art. 22 (4) of Law no. 90/2001. the heads of public institutions with legal personality from the subordination / coordination of the main authorising officers are secondary or tertiary authorising officers, as appropriate. For the cases provided for by special laws, the main authorizing officers are the general-secretaries or the persons designated by these laws". In their own operating laws of specialized bodies, public authorities or autonomous public institutions, these leaders appear under the

[7]Paragraph 2.5 of the Internal Management Control Code of the Public Entity approved by SGG Order no. 400/2015.

title of presidents, director or general manager, inspector, or other specific titles, such as the People's Advocate. From the legal nature perspective of the held office, these leaders have the status of public officials or senior civil servants or civil servants with special status, to whom are being applicable specific provisions on liability, namely the Law no. 115/1999 on ministerial liability, Law no. 188/1999 on the status of civil servants or other special laws.

According to art. 1 of GO 32/1998 a dignitary from the central public administration is: the Prime Minister, the Deputy Prime Minister, the Minister of State, the Minister, the Deputy Minister, the Secretary General of the Government, the Head of the Prime Minister's Office, the Deputy Secretary General of the Government, the State Secretary and his counterpart from the General Secretariat of the Government, from the Chancellery of the Prime Minister, from the Department for Relations with Parliament and from within the Ministries, as well as the head of the specialized bodies of the central public administration, with the rank of State Secretary.

The Law no. 90/2001 on the organization and functioning of the Government stipulates at art. 28 that, in carrying out its function of general management of public administration, the Government exercises hierarchical control over the ministries, specialized bodies under its subordination, as well as on the prefects, having the right to cancel the illegal or inappropriate administrative acts issued by the public administration authorities under its subordination, as well as those of the prefects. According to art. 35 of the same normative act, corroborated with art. 31, the ministers are responsible for their entire ministry's work in front of the Government, and, as members of the Government, are politically accountable to Parliament.

Ministerial leadership is exercised by the ministers[8]. They appoint and dismiss the heads of the specialized bodies under the ministry subordination[9]. In the exercise of their mandate, the Ministers assume in their field of activity attributions regarding the organization, coordination and control of the application of the laws, of the ordinances and decisions of the Government, of all orders and instructions issued according to the law, observing the limits of authority and the principle of local autonomy of public institutions and the economic agents. Ministers also assume the leadership of the ministry's own apparatus.

Careful analysis of the indicated texts, corroborated with those of GO no. 119/1999 shows that, although not explicitly regulated, the sanction that may be applied to a minister or other head of the specialized bodies subordinated to the Government is his revocation, respectively the governmental reshuffle, as a result of the hierarchical controlling, what equates with a form of managerial liability.

According to art. 12 of the Law no. 188/1999 on the civil servants statute, are senior civil servants: the General Secretary of the Government and the Deputy General Secretary of the Government; the General Secretary of Ministries and other specialized bodies of the central public administration; the prefect; the Deputy General Secretary of Ministries and other specialized bodies of the central public administration; the sub-prefect and the government inspector, and according to Art.13 are leading civil servants: the general manager and deputy general manager of the apparatus of the autonomous administrative authorities, ministries and other specialized bodies of the central public administration, as well as in the specific public functions assimilated to them; the director and the deputy director of the apparatus of the autonomous administrative authorities, of the ministries

[8]Art. 46 of the Law no. 90/2001.
[9]Art. 44 (2) of the Law no. 90/2001.

and of the other specialized bodies of the central public administration, as well as in the specific public functions assimilated to them; the secretary of the administrative-territorial unit; the Executive Director and the Deputy Executive Director of the decentralized public services of the ministries and other specialized bodies of the central public administration in the administrative-territorial units, within the prefect institution, within the own apparatus of the local public administration authorities and of the public institutions subordinated to them, as well as in the specific public functions assimilated to them.

According to art. 43 of the same law, civil servants have the obligation to professionally, impartially and legally comply with the duty of service and to refrain from any act that could harm the natural or legal persons or the prestige of the civil servants' body, and according to Art. 45 they are responsible by law for carrying out their duties of public office they hold and of the powers delegated to them. As stated by the Art. 77 the guilty breaches by civil servants of the duties of the public office which they hold and of the professional and civic norms provided by the law constitute a disciplinary offense and entail their disciplinary liability. However, its liability cannot be enforced if it has complied with the legal provisions and administrative procedures applicable to the public authority or institution in which it operates[10]. In this context, are regulated as disciplinary deviations according to Art. 77, among others: repeated negligence in solving the works; the refusal to perform the duties of office and infringement of legal provisions on duties, those on incompatibilities, conflicts of interests and prohibitions established by law for civil servants. Applicable sanctions are the written reprimand; reducing salary rights by 5-20% over a period of up to 3 months; suspension of the right to advance in salary grades or, where appropriate, promotion to public office for a period of 1 to 3 years; the relegation on the public office for up to one year period or the dismissal from public office.

It follows that in the case of civil servants - leaders of public entities and credit officers, the managerial responsibility for failing to fulfil their obligations under the law is equivalent to the disciplinary liability, to which the civil liability may be added, for the damages caused.

2. Heads of institutions of local government

According to art. 21 of Law no. 273/2006 on local public finances, "the main budget ordinators of the local budgets are the mayors of the administrative-territorial units, the mayor of Bucharest, the mayors of the Bucharest districts and the presidents of the county councils. The heads of public institutions with legal personality, to whom funds are allocated from the budgets provided in art. 1 par. (2), are secondary or tertiary authorising officers, as the case may be". The regime of liability provided for by Law no. 393/2004 on the statute of local elected representatives applies to them. Thereby, as stated in Art. 73 of this normative act, the mayors may be removed from office after a referendum, under the conditions and in the cases established by the Law no. 215/2001. Aiming to support the provisions of the GO no. 119/1999, the Art. 61 (2) of the Law no. 215/2001 stipulates that "the mayor shall ensure the observance for the fundamental rights and freedoms of the citizens, of the Constitution provisions, as well as *enforcement of the laws*, of the decrees of the President of Romania, of the Government decisions and ordinances, and of the local council's rulings; he/she shall order the necessary measures and provide support for the application of the normative

[10]Art. 76 of the Law no. 188/1999.

orders and instructions of the ministers, of the other heads of the central public administration authorities, of the prefect, as well as of the county council's rulings, under the law.

Art.118 of the Law no. 215/2001 defines as contravention, among other, "the failure to present the reports provided by the law by the mayor or the chairman of the county council, from their fault and the failure to take the necessary measures, established by the law, by the mayor or the president of the county council, in their capacity as representatives Of the state in the administrative-territorial units". This text needs to be corroborated with Art. 115 according to which, in order to carry out his respective duties, the mayor issues provisions, which are subject to the legality control of the prefect under the conditions of the law regulating his activity. Last but not least, the sanction that can be applied to the mayor for non-fulfilment of the legal obligations, beyond the responsibility for contraventions, is the one stipulated by art. 73 of Law no. 393/2004, respectively the revocation of office following a referendum. This referendum can be organized, according to Art. 70 of the Law no. 215/2001, as a result of the request addressed to the prefect by at least 25% of the citizens of the commune, city or municipality having the right to vote, as a result of the disregarding by the prefect of the general interests of the local community or the *non-exercising of its responsibilities under the law*, including those which he exercises as a representative of the state".

According to Art. 103 of the Law no. 215/2001, "the president of the county council is responsible for the proper functioning of the specialized apparatus of the county council, which he leads. The President of the County Council ensures the observance of the Constitution provisions, *the enforcement of the laws*, of the decrees of the President of Romania, the decisions and ordinances of the Government, the decisions of the county council, as well as other normative acts".

Art. 69 of the Law no. 394/2004 regulates the sanctioning mode of the president of the county council when he fails to fulfil his legal obligations. Thus, for serious and repeated deviations, he may be reprimanded or it may be applied warning, the reducing the allowance by 5-10% over 1-3 months or the release from office. The first two sanctions shall be applied, by decision of the board, to the motivated proposal of at least one third of the number of councillors in office and shall be duly motivated. The decision is adopted with the open vote of the majority of the councillors in office. The last two sanctions provided may be applied only if it is proved that the president of the county council violated the Constitution, the other laws of the country or prejudiced the interests of the country, of the administrative-territorial unit or of the inhabitants of the respective administrative-territorial unit and the decision is adopted with the secret vote of at least two-thirds of the number of councillors in office.

Accordingly, it is unlikely in this context that a referendum for the mayor's revocation or the dismissal of the president of the county council can be triggered - which could equate to the assumption of managerial accountability as a result of failing to implement the obligations regarding the internal managerial control system organization, even if theoretically exists such a possibility. It remains applicable in this situation contravention sanction for not submitting the report on internal management control system.

It should be noted that, according to Art. 117 (2) of the Law no. 215/2001, "by way of derogation from the provisions of art. 21 (2) of the Law no. 273/2006, in the situations provided by Art. 55 (8 ^ 1) or, as the case may be, in the art. 99 (9), the secretary of the administrative-territorial unit shall act as the main authorizing officer for the current activities". In such a

situation, the question is who is the incumbent on the obligations on the organization of internal control management? Based on the systematic analysis of the legal provisions and seeing that the situations regulated by art. 55 and 99 are temporary, it is our opinion that this remains in the charge of the mayor or the president of the county council, in their capacity as leaders of public entities.

3. Leaders of the public enterprises

One last category of public entities leaders addressed to in this paper is that of state owned companies managers, such as state owned companies are defined by the Government Emergency Ordinance 109/2011. According to the mentioned GEO, state owned companies[11] are established by the state or by an administrative-territorial unit, national companies and societies, societies fully controlled by the state or by an administrative-territorial unit or those where them are the sole or majority shareholder, as well as those companies to which one or more public enterprises referred to points a and b hold a majority holding or they are fully controlling them.

According to the latter normative act, "The competence to take administrative decisions and management decisions of the public enterprise and the liability, under the law, for the effects thereof, rests with the board of directors and directors, if managerial duties have been delegated to them or, as the case may be, to the supervisory board and the directorate"[12].It is worth noting from the corroborated analysis of this text with that of the GEO no. 119/1999 on the meaning of the concept of the leader of the public entity and of the authorizing officer, that the three concepts are convergent and refer to "the person empowered by law or by delegation, according to the law, to order and approve operations".

Board of Directors in the state owned companies case consists of one representative of the Ministry of Finance, one representative of the tutelage public authority, and 1-5 persons with experience in the administration or management of state owned companies or societies, including private sector companies. The lasts cannot be civil servants nor other categories of staff within the tutelage public authority or other public institutions. *Per a contrario*, the first two categories of persons which may be part of the board of administration of a state owned companies may be dignitaries or civil servants or contract staff, and the legal provisions previously dealt with in the matter of liability are applicable to them.

The supervising public authority concludes with the administrators of the state owned company mandate contracts for the administration of the entity, which includes, in the annex, the financial and non-financial performance indicators[13]. Based on this mandate, the *board of directors*[14] appoints and revokes directors; negotiates financial and non-financial performance indicators with the tutelage public authority; *verifies the operation of the internal or managerial control system*; monitor and evaluate the executives' performance; prepares the half-yearly report on the activities of the state owned company, which is presented to the public tutoring authority; *monitor and manage potential conflicts of interest at the level of administration and management bodies; supervises the transparency and communication system*. They report monthly to the supervising public authority the fulfilment of financial and non-financial performance indicators.

[11]Article 2, point 2 of the GEO no. 109/2011 on the Corporate Governance of Public Enterprises, approved with amendments by the Law no. 111/2016.
[12]Article 4 (2) of GEO no. 109/2011.
[13]Art. 12 of GEO 109/2011.
[14]Art. 9 din OUG 109/2011Article 12 of GEO 109/2011.

The members of the board of directors are responsible for the failure to perform the mandate with the prudence and diligence of a good administrator, i.e. with loyalty and in the interest of the state owned company. The duty of diligence is deemed to be fulfilled if "when a business decision is taken, the manager is reasonably entitled to consider that he acts in the interests of the state owned company and on the basis of appropriate information.

According to art. (1) the administrators are also responsible for the fulfilment of *all the obligations stipulated by the law* and by the act of establishment, as well as for the damages caused to the state owned company by the acts performed by the directors, if the damage would not have occurred if they exercised the supervision imposed by the duties of their function. The action against the administrators is brought by the tutelary public authority through its manager.

The executive management powers of the state owned company may be delegated by the board of directors to one or more directors, who within the meaning of GEO no. 109/2011 are the persons to whom the company's management powers have been delegated, according to the provisions of art. 143 of the Companies Law no. 31/1990; the financial / economic director being assimilated to the director. The directors thus appointed represent the state owned company based on a mandate contract and are responsible for fulfilling it under the same conditions as the administrators. According to Art. 23, the directors are responsible for taking all measures related to the management of the state owned company, within the scope of its activity and in compliance with the exclusive competencies reserved by law to the board of directors.

The administration and the management of public enterprises - are carried out under conditions similar to those of the state owned companies in terms of the elements of liability applicable to the members of the management or supervisory board, and to the directors or to the directorate members.

The provisions regarding the mandate contract are supplemented by those stipulated by the Civil Code by Law no. 31/1990. Thereby, according to art. 1.915 of the Civil Code, the administrators are personally liable to the company for the damages caused through the *violation of the law*, of the mandate received or by *fault in the administration of society*.

The mandate is in accordance with art. 2009 of the Civil Code the contract by which a party, appointed as a trustee, undertakes to conclude one or more legal acts on behalf of the other party, appointed as a trustee. In the case of public enterprises, the mandate is one for consideration, and there is also a legal obligation to publish the remuneration policy of the administrators and directors. In this case, as also shown before, the mandate must be performed with the diligence of a good owner.

In conclusion, the administrators and directors are responsible for the fulfilment of the financial and non-financial indicators, respectively for taking all the necessary measures to their achievement. This liability takes the form of damages for harming the interests of the public enterprise and / or revocation of the mandate.

Regarding the non-financial, relevant to the present discussion is a brief analysis of the obligations established by Order no. 1938/2016, according to which certain categories of public enterprises include in the "administrators' report a non-financial statement containing information on at least the environmental aspects, social and by human resources, respect for human rights, *fighting corruption and of bribery*, including a brief description of the entity's business model; a *description of the policies adopted* by the entity in connection with these matters, *including due diligence procedures applied*; the results of those

policies; *the main risks related to these issues* arising from the entity's operations; non-financial key performance indicators relevant to the specific activity of the entity". This obligation on non-financial indicators is able to clarify to some extent the size of the diligence obligation incumbent the administrators and managers.

4.Conclusions

Analysing the above referred legal provisions provided us the ability of understanding that the managerial responsibility for the organization of the internal management control system and the reduction of the vulnerabilities to corruption is predominantly limited to the possibility of loss of the managerial position held, but this measure satisfy just partly the need to ensure compliance. It is worth noting that the instruments at hand are insufficient and unequal, and in some circumstances, those sanctioning instruments are even disproportionate.

The possibility of one barely sanctioning for a contravention the head of a city hall for non-organizing the managerial internal control system is thereby considered as insufficient. In the present case, the mayor may be removed from office only on the basis of a referendum and the prefect cannot exercise the right of administrative oversight as long as we are faced with a refusal to issue an administrative act, refusal which, according to the Decision of the Supreme Court no. 26/2016, cannot be appealed before administrative courts.

The same situation may occur, for example, also in the case of ministers who are politically responsible only to the Parliament, which makes unlikely the withdrawing of the Government's confidence for not applying the provisions on the managerial internal control system.

Such measure, that might be considered disproportionate, is that related to the application of the provisions of Art. 18^5 of the Law no. 78/2000 according to which "*culpable breach* by the director, the administrator or the person having decision-making power or control over an economic operator *of a service duty, by failing to fulfil it or by improper performance*, if the deed has resulted in committing of one of the offenses provided for in art. 18^1-18^3 by a person under his/ her control and who acted on behalf of that economic operator, or an offense of corruption or money laundering in connection with EU funds, is punishable by imprisonment from six months to three years or a fine.

It follows from the pooled analysis of all the laws analysed that if the directors or managers of public enterprises do not organize the internal management control system or organize it defective, such that it results in committing acts of corruption by the staff, the administrators and executives are criminally responsible for their lack of diligence in fulfilling their mandate.

It remains to be clarified in the light of the Constitutional Court's Decision no. 405/2016 to what extent it may be engaged the criminal liability of the managers of public enterprises for the non-organization of the managerial internal control system, respectively for non-compliance with the Standard No. 1, seeing that it is regulated by Order no. 400/2015, while "the Court has held that the failure or defective performance of an act should be considered only by reference to service duties specifically governed by primary law - laws and ordinances of the Government. This is due to the fact that the adoption of secondary regulatory acts that comes to detail the primary legislation is done only within the limits and according to the norms that they order". A counter-argument for engaging this form of liability is, of course, that the obligations established by the Standard No. 1 originate into the primary legislation, the standard

being devoted merely to identify and count those obligations and not for regulating new ones, which is likely to meet the requirement of the constitutional litigation court.

The latter sanction measure is appreciated to be disproportionate in relation to the persons - the leaders of the public entities to which they may be applied. In the present case it is exclusively about the heads of the economic operators, and not the heads of public institutions and public authorities, although, at least at the theoretical level, a crime committed by the lasts should pose a greater social menace than in the economic operators' case.

At the same time, we find that all the legal provisions regulating the managerial internal control obligations are extremely heterogeneous, most of these provisions not incorporating explicit sanctions, so making suitable the general sanctions for non-observance of public order rules.

Regardless of the applicable sanctioning form, it is assessed that the current regulation does not actually answer the concrete need - to determine the law enforcement and not just sanction for non-compliance.

In this context, it would be necessary, *de lege ferenda*, the development of regulations that:

1. Ensure a unitary system of managerial accountability, which will respectively oblige the heads of public entities to organize the internal managerial control system. Such a system must allow the prefect or the oversight authority or any interested party to obtain in court the obligation of the public entity's manager to fulfil this obligation. Such a solution can not be interpreted either as a defeat of the principle of local autonomy or of the operational independence of public enterprises, but merely as a measure to control the legality of their work.

2. Provide a unique source to regulate the sanctioning regime so as to ensure the predictability and clearness of the legal norm.

3. Ensure the regulation of the requirements of internal managerial control, respectively the sanctioning regime at the level of primary legislation, in order to avoid further interpretation in the sense of circumventing/ avoiding the application of the legal provisions in the field.

Last but not least, it is considered that it is up to the courts to support the uniform implementation of the internal control system management through the application of a sanction regime common law when the current regulations do not expressly provide for sanctions for non-implementation of the law.

APPENDIX

Normative act	Legal obligation charge of public entity manager	Penalties applicable to public entity head for legal obligation infringements
Law no. 477/2004 on the Conduct Code for Contract Staff in Public Authorities and Institutions	Art. 25 - Within 30 days of the entry into force of this law, public authorities and institutions shall harmonize the internal organization and functioning regulations or their specific codes of conduct in accordance with the provisions of this Code of Conduct, depending on their activity area.	
Law no. 7/2004 on the Civil Servants Conduct Code (republished)	Art. 21 - (1) To effectively apply the provisions of this Conduct Code, the heads of public authorities and institutions shall designate a civil servant, usually within the human resources department, for ethical counselling and monitoring compliance with the conduct rules. (2) The persons mentioned in paragraph (1) perform the following attributions: a) providing advice and assistance to civil servants within the public authority or institution regarding compliance with conduct rules; b) monitoring the application of this Conduct Code within the authority or public institution; c) drawing up quarterly reports on compliance by the civil servants within the public authority or institution with the conduct rules.(3) Powers provided under Paragraph (2) are exercised on the basis of an administrative act issued by the head of the public authority or institution or by filling in a job description with a distinct attribution of ethical advice and monitoring of compliance with the conduct rules. (4) The reports referred to in paragraph (2) c) approved by the head of the public authority or institution shall be communicated to the civil servants of the public authority or institution and shall be transmitted on a quarterly basis, in the terms and in the standard form established by the instructions of the Civil Servants National Agency. (5) Public authorities and institutions reports on conduct rules compliance	

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	will be centralized in a database necessary for: a) identification of the breaches of professional conduct causes, including constraints or threats exerted on a public servant to cause it to violate legal provisions in force or to apply inadequately; b) identifying ways to prevent professional conduct breaches; c) adopting measures on reduction and elimination of legal provisions non-compliance cases. Art. 24 - Within 60 days of the entry into force of this law, public authorities and institutions shall harmonize the internal organization and functioning regulations or the specific conduct codes, in conformity with the provisions of this Conduct Code, and according to their activity field.	
Law no. 78/2000 on the prevention, detection and sanctioning of corruption, with subsequent amendments and completions	Art.1 - (1) This law establishes measures to prevent, detect and sanction corruption and applies to the following persons: a) exercising a public function, regardless of how they were invested, within public authorities or public institutions; b) who fulfill, permanently or temporarily, according to the law, a position or a task, insofar as they participate in the decision making process or can influence them, within the public services, to the state owned companies, the companies, the national companies, the national societies, the cooperative units or other economic agents; c) exercising control duties, according to the law; d) which provide specialized assistance to the units referred to in Letter (a) and (b), to the extent that they participate in decision-makings, or may influence them; e) who, irrespective of their quality, carry out, control or provide specialized assistance, in so far as they participate in, or influence, decision-making on: operations that involve the circulation of capital, bank operations, exchange or credit, investment operations in stock exchanges, in insurance, mutual investment or regarding the bank accounts and assimilated, domestic and international commercial transactions; f) who hold a leading position in a party or in a political formation, in a trade union, in an employers' organization or in a non-profit-making association or foundation; g) other natural persons than those mentioned at Letters a) -f), under the conditions provided by the law. Art. 2 - *The persons referred to in Art. 1 are required to perform duties*	Art. 18^5 Culpable breach by the director, the administrator or the person having decision-making power or control over an economic operator of a service duty, by failing to fulfil it or by improper performance, if the deed has resulted in committing of one of the offenses provided for in Art. 18^1-18^3 by a person under his/ her control and who acted on behalf of that economic operator, or an offense of corruption or money laundering in connection with EU funds, is punishable by imprisonment from six months to three years or a fine.

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	derived by their functions exercising, of their attributions or assignments entrusted in strict compliance with the laws and rules of professional conduct, and to ensure the protection and realization of rights and citizens legitimate interests, without using their functions, duties or their trust, to acquire for them or other persons money, goods or other undue benefits.	
Law no. 161/2003 on certain measures for ensuring transparency in the exercise of public dignities, public functions and business environment, prevention and sanctioning of corruption, with subsequent amendments and completions	Art. 70. A conflict of interest means the situation in which a person exercising a public dignity or a public office has a personal interest of a patrimonial nature that could influence the objectively fulfilling of his attributions according to the Constitution and other normative acts. Art. 72 (1) A person acting as a member of the Government, Secretary of State, Undersecretary of State or functions assimilated to them, prefect or sub-prefect is obliged not to issue an administrative act or to conclude a legal act or not to take or not to take part in making a decision in the exercise of a public office of authority which produces a material benefit for himself or for his spouse or his relatives of the first degree. (2) The obligations provided in paragraph (1) do not concern the issuance, approval or adoption of normative acts.	Art. 73 (1) Violation of obligations under Art. 72 (1) constitutes administrative misconduct if it is not a more serious deed, according to the law. (2) The administrative acts issued or legal acts concluded in breach of the obligations stipulated in Art. 72 (1) are hit by absolute nullity.
	Art. 76 (1) The mayors and deputy mayors, the mayor and the deputy mayors of the municipality of Bucharest are obliged not to issue an administrative act or to conclude a legal act or to not issue a provision in the exercise of their function which produces a material benefit for oneself, For her husband or her first degree relatives.	Art. 76 (2) The administrative acts issued or the legal acts concluded or the provisions issued in violation of the obligations provided in paragraph (1) are hit by absolute nullity.
	Art. 79 (1) The civil servant is in conflict of interest if he is in one of the following situations: a) is called upon to resolve requests, to make decisions or to participate in the decision making regarding natural and legal persons with whom he has patrimonial relations; b) participates in the same commission, established under the law, with civil servants who have the status of a first-degree spouse or relative; c) his patrimonial interests, of his spouse or relatives of grade I, may influence the decisions to be taken in	Art. 79 (4) Infringement of the provisions of paragraph(2) may, as the case may be, incur disciplinary, administrative, civil or criminal liability, according to the law.

	exercising the public service. (2)In the event of a conflict of interest, the civil servant is obliged to refrain from resolving the request, of taking the decision or to participate in the decision making process, and immediately informing the hierarchical chief to whom he/ she is directly subordinated. This is obliged to take the necessary measures for the impartial exercise of the civil service, within maximum 3 days from the date that he becomes aware. (3) In the cases provided in paragraph(1), the head of the public authority or institution, at the proposal of the hierarchical chief to whom the civil servant in question is directly subordinated, shall designate another public official who has the same training and level of experience.	
	Art. 90 (1) The local councillors and county councillors who are chairperson, vice president, general manager, director, manager, administrator, member of the board of directors or censor or have other managerial positions, as well as those who are shareholder or associate in commercial companies with private capital or state capital or capital of an administrative-territorial unit, may not conclude commercial contracts for the provision of services, execution of works, supply of products or contracts of association with the local public administration authorities of which they belong, with the autonomous institutions or state owned companies of local interest under the subordination or under the authority of the respective local or county council or with the commercial companies established by the respective local or county councils. (2) The provisions of paragraph (1) also apply in the cases where the respective functions or qualities are held by the spouse or first-degree relatives of the local elected representative. Art. 93 (1) The provisions of art. 90 shall also apply to the persons with an individual employment contract in the local or county council own apparatus or to the state owned companies under the authority of the respective councils or in companies established by the respective local or county councils.	Art. 93 (2) The violation by the persons mentioned in paragraph (1) of the provisions of Art. 90 attracts the legal termination of labour relations. (3) *The finding of the termination of the employment relationship shall be made by order or disposition of the heads of the public authorities or of the agents*. Failure to comply with public policy rules when issuing documents or concluding contracts attracts, according to the common law in the matter, their nullity.

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Law no. 215/2001 of the local public administration	Art. 47 (1) The counsellor who, either in person or through husband, wife, in-laws or relatives up to the fourth degree inclusive, has a patrimonial interest in the matter to be debated by the local council cannot take part in deliberation and the adoption of judgments.	Art. 47 (2) The decisions adopted by the local council in breach of the provisions of paragraph (1) are null and void. Nullity is found by the administrative litigation court. The action may be brought by any interested person.
	Art. 83 (3) The Secretary may not be the spouse, wife or first degree relative with the mayor or deputy mayor.	Art. 154 (1) The councillors, mayors, deputy mayors, the mayor of Bucharest, the presidents and deputy chairmen of the county councils, the secretaries and the staff from the specialized apparatus of the local public administration authorities and of the county councils respectively, shall be liable, as the case may be, for administrative, civil or criminal actions for the acts committed in the exercise of their duties, according to the law. (2) The provisions of paragraph (1) shall also apply to prefects, sub-prefects, secretaries-general and to the staff of the prefect's specialized apparatus.
Law no. 393/2004 on the status of local elected representatives	Art. 74 (1) The local elected representatives are obliged to make their personal interests public through a declaration on their own responsibility, filed in duplicate with the secretary of the commune, the city, the municipality, the Bucharest sector, respectively the general secretary of the county or the municipality of Bucharest , as the case. (2) A copy of the declaration of personal interests shall be kept by the Secretary in a special file called the Register of Interests. (3) The second copy of the declaration of interests shall be forwarded to the	Art. 55 The local elected representatives shall be responsible, under the law, administrative, civil or criminal, as the case may be, for the acts committed in the exercise of their duties. Art. 81 Decisions taken in disregard of the provisions of Art. 77 are invalid, according to the provisions of Art. 47 (2) of the Law

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	general secretary of the prefecture, who shall keep them in a special file, called general register of interests. Art. 75 Local elected persons have a personal interest in a particular issue if they have the possibility to anticipate that a decision of the public authority they are part of may have a benefit or a disadvantage for themselves or for: a) husband, wife, relatives or in-laws to the second degree inclusive; b) any natural or legal person with whom they have a commitment relationship, regardless of their nature; c) a company in which they hold the status of sole associate, the position of administrator or from which they receive income; d) another authority to which they belong; e) any natural or legal person other than the authority of which they belong, who made a payment to them or made any of their expenses; f) an association or foundation to which they belong. Art. 76 In the statement of personal interests, the local elected representatives shall specify: a) the positions held in commercial companies, public authorities and institutions, associations and foundations; b) incomes obtained from the collaboration with any natural or legal personand the nature of the collaboration; c) participation in the capital of the companies, if it exceeds 5% of the capital of the company; d) participation in the capital of commercial companies, if it does not exceed 5% of the capital of the company but exceeds the value of 100.000.000 lei; e) associations and foundations whose members are; f) immovable property held in property or in concession; g) the functions held by the husband/ wife in commercial companies, authorities or public institutions; h) immovable property owned or concession by the husband/ wife and minor children; i) the list of the properties held within the territorial-administrative unit, of which administration authorities they belong; j) gifts and any material benefits or advantages made by any natural or legal person, related or resulting from the position held within the local public administration authority; any gift or donation received by local elected representatives on a public or festive occasion becomes the property of that institution or authority; k) any other	no. 215/2001, as subsequently amended and supplemented. Art. 82 (1) Failure to observe the declaration of personal interests within the term stipulated in Art. 79 *challenges the rightful suspension of the mandate until the declaration is filed*. (2) *Refusal to file a declaration of personal interests shall entail the termination of the right of the mandate.* (3) Suspension or termination of the mandate shall be established by decision of the local council or the county council respectively. Art. 83 Gifts and any material benefits not declared according to the provisions of Art. 76 j) are subject to confiscation.

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	interests, established by decision of the local council, in the case of mayors, deputy mayors and local councillors, or by a decision of the county council, in the case of its president and vice-president and county councillors. Art. 77 (1) County counsellors and local councillors may not take part in the deliberations and the adoption of decisions if they have a personal interest in the matter to be debated. (2) In the situations stipulated in paragraph (1), the local councillors and county councillors are obliged to announce at the beginning of the debates their personal interest in the matter. (3) Announcement of personal interest and abstain from voting shall be recorded compulsorily in the minutes of the meeting. Art. 79 (1) The declaration of personal interests shall be filed as follows: a) within 15 days from the date of declaring the council as legally constituted, in the case of county councillors and local councillors; B) within 15 days from the swearing-in, in the case of mayors; C) within 15 days of election, in the case of the presidents and deputy chairmen of the county councils and deputy mayors. (2) The local elected representatives at the date of entry into force of the present law shall file the declaration within 30 days from the publication in the Official Gazette of Romania, Part I, of the Government Decision stipulated in Art. 74 (4). Art. 80 (1) Local elected representatives are obliged to update the statement of personal interests at the beginning of each year, but no later than February 1st, if significant changes occurred in relation to the previous declaration. (2) The secretary of the territorial-administrative unit shall send to the secretary general of the prefecture, by March 1st each year, a copy of the updated statements.	
Law no. 176/2010 regarding the	Art. 5 (1) Within the entities in which the persons have the obligation to submit declarations of wealth and declarations of interests, in accordance	Art.(1) Failure to submit declarations of wealth and declarations of interests within

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integrity in exercising public functions and dignities, amending and supplementing Law no. 144/2007 on the establishment, organization and functioning of the National Integrity Agency, as well as for the modification and completion of other normative acts, with subsequent amendments and completions	with the legal provisions, *persons responsible shall be appointed to ensure the implementation of the legal provisions regarding the declarations of assets and declarations of interests*. (2) The declarations of wealth and declarations of interests are filed as follows: a) the President of Romania, the presidential advisers and the state councillors - to the person appointed by the head of the Chancellery of the Presidential Administration b) the Presidents of the Chambers of Parliament, deputies and senators - to the person appointed by the Secretary General of the Chamber of which they are members, c) Romanian members of the European Parliament and members of the European Commission from Romania – to the Permanent Electoral Authority, d) the Prime Minister, the members of the Government, the state secretaries, the sub-secretaries of state and their assimilations, as well as the state councillors from the working apparatus of the Prime Minister - to the person designated by the Secretary General of the Government; e) members of the Superior Council of Magistracy , Judges, prosecutors, judiciary assistants and assistant magistrates - to the person designated by the Secretary General of the Superior Council of Magistracy, f) members of the National Integrity Council, as well as the president and vice-president of the Agency - to the person designated by the Secretary General of the Senate; g) the county councillors and local councillors, the mayors, as well as the presidents of the county council - to the person appointed by the secretaries of the respective administrative-territorial units; h) prefects and sub-prefects - to the person appointed by the secretary of the prefect's chancellery; i) other categories of persons prescribed by law - to the person designated by the head of the human resources department or, as the case may be, by the head of the secretariat within the public authorities, public institutions or units to which they belong. (3) *In exercising the duties provided by the present law, the persons designated according to the provisions of paragraph (2) are directly subordinated to the head of the respective institution, which is responsible*	the time limits provided by the present law, as well as the non-declaration in the declaration made according to the annex no. 1 of the amount of the realized revenues, or the declaration thereof with reference to other documents constitutes a contravention and shall be sanctioned with a fine from 50 lei to 2,000 lei. The Agency may initiate the assessment procedure of its own motion. *(2) Failure to comply with the obligations under art. 6 by the persons responsible for implementing the provisions of the present law constitutes a contravention and shall be sanctioned by a fine from 50 lei to 2,000 lei. The same penalty applies to the head of the entity, if it fails to meet the obligations provided by this law.* (3) The non-application of the disciplinary sanction or the failure to establish the cessation of the civil service, as the case may be, when the finding is definitive, constitutes a contravention and shall be sanctioned with a fine from 50 lei to 2,000 lei, if the act does not constitute an offense.

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	for the proper conduct of their work. (4) During the period of secondment or delegation, the persons who are required to submit declarations of wealth and declarations of interests submit to the institution from which they have been delegated or seconded.	
	Art. 15 (2) At the motivated request of the integrity inspector, the natural and legal persons, heads of authorities, institutions or public or private companies, as well as those of the state owned companies are obliged to communicate to the latter, within 30 days, the data, the documents and papers requested according to the provisions of paragraph (1), regardless of their support, as well as data, information or documents they hold, which could lead to the solution of the work.	Art. 27 (1) Failure to comply with the Agency's requests under this law shall be sanctioned by a civil fine of 200 lei for each day of delay. Referral to the court is done by the integrity inspector within the Agency. (2) The court competent to decide on the application of the fine provided for in paragraph (1) is the court in whose jurisdiction the sanctioned legal person's place of residence or the domicile of the sanctioned natural person is located. The judgment is made urgently and especially with the parties quoting. (3) The decision of the court to apply the fine is subject to appeal, within 10 days of pronouncement, for those present, and for those absent within 10 days of communication.
Law no. 251/2004 on certain measures relating to goods received free of charge in connection with	Art.(1) Persons having the status of public dignitary and those holding public dignity, magistrates and assimilated persons, persons with management and control functions, civil servants from public authorities and public institutions or institutions of public interest, and other persons having, according to the law, the obligation to declare their wealth, also have the obligation to declare and present to the head of the institution,	

protocol actions in the exercise of their mandate or function	within 30 days of receipt the goods, the goods they have received free of charge in connection with the protocol activities in the exercise of their mandate or function. (2) Exempted from the provisions of paragraph(1) are a) medals, decorations, badges, orders, scarves, collars and the like, received in the exercise of dignity or function; b) office supplies with a value of up to EUR 50. Art 2(1) *The head of the authority, the public institution or the legal person orders the establishment of a committee* of 3 specialists from the institution, who will evaluate and inventory the goods referred to in Art. 1.	
Government Decision no. 1.126 / 2004 for the approval of the Regulation for the implementation of Law no. 251/2004 on certain measures relating to goods received free of charge in connection with protocol actions in the exercise of the mandate or function	Art. 2Within the public authorities and institutions or legal entities in which the staff referred to in Art. 1 of the Law no. 251/2004 on certain measures related to the goods received free of charge in connection with acts of protocol in the exercise of the mandate or function, hereinafter referred to as the law, shall constitute, by administrative act of the head of the unit, the Commission for evaluation and inventory of goods received free of charge in connection with protocol actions in the exercise of the mandate or public office, hereinafter referred to as the Commission.	
Law no. 571/2004 on the protection of personnel in public authorities,	Art. 11 Within 30 days from the entry into force of this law, the public authorities, public institutions and other budgetary units provided by art. 2 will agree the rules of internal order with its provisions.	

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public institutions and other units that report violations of the law		
Government Ordinance no. 119/1999 on internal / managerial control and preventive financial control, republished, with subsequent amendments and completions	Art. 4 Obligations of the public entity manager in the field of internal/ managerial control; the requirements of internal / managerial control (1) The leader of the public entity must ensure the development, approval, implementation and improvement of organizational structures, methodological regulations, procedures and evaluation criteria to meet general and specific internal/ managerial control requirements (3) The head of the public entity prepares annually a report on the internal/ managerial control system, which is transmitted to the General Secretariat of the Government	Art. 27 Contraventions The following deeds constitute contraventions and are sanctioned if they are not committed under such conditions as to be considered, according to criminal law, as offenses: j) the failure of the authorizing officer to fulfil his obligation to elaborate and present the annual report on the internal/ managerial control system provided for in Art. 4 (3)
Government Decision no. 583/2016 on the approval of the Anti-Corruption National Strategy for 2016-2020, of performance indicators sets, the risks associated with the objectives and	Art. 6 (1) Within three months from the date of entry into force of this judgment, all central and local public institutions and authorities, including subordinated, coordinated, under authority, as well as public enterprises, shall complete the procedures for adhering to the strategy and within six months from the same date, develop and transmit to the Ministry of Justice the related integrity plans. (2) Integrity Plans shall be approved by order or decision of the management of the institutions and authorities referred to inparagraph (1). (3) By the act provided in paragraph (2) the coordinator of implementation of the integrity plan, at the level of the management function, as well as the contact persons at the level of the execution function shall be appointed. The duties of the persons thus appointed shall be detailed by order, decision or	

measures of the strategy and the sources of verification, the inventory of institutional transparency measures and prevention of corruption, of the evaluation indicators and standards for publishing information of public interest.	job description, as the case may be.	
Law no. 52/2003 on decisional transparency in public administration	Art. 7 (7) The head of the public authority will designate a person within the institution, responsible for the relationship with civil society to receive the proposals, suggestions and opinions of the persons concerned on the proposed draft legislative act. Art. 18 Within 30 days from the entry into force of this law, the public authorities and other legal entities stipulated in Art. 4 shall be obliged to amend their regulations of organization and functioning in accordance with the provisions of this law.	
Law no. 544/2001 on free access to information of public interest	Art. 3 The public authorities and institutions shall provide ex officio or upon request, through the public relations department or one person designated for that purpose, the access to information of public interest. Art. 4 (1) In order to ensure that every person has access to public information, the public authorities and institutions have the obligation to organize specialized information and public relations compartments or to	

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	appoint persons with attributions in this field. (2) The functions, organization and functioning of the public relations compartments shall be established, on the basis of the provisions of the present law, by the regulation for the organization and functioning of the respective public authority or institution. Art. 21 (1) The explicit or tacit refusal of a designated employee of a public authority or institution to enforce the provisions of this law constitutes misconduct and entails disciplinary liability of the guilty.(2) Against the refusal provided in paragraph (1) a complaint can be lodged with the head of the respective public authority or institution within 30 days of the acquaintance of the injured person.(3) If, after the administrative investigation, the complaint is found to be well founded, the response will be sent to the injured person within 15 days of filing the complaint and will contain both the information of public interest originally requested and the disciplinary sanctions done against the culprit.	
Decision no. 123/2002 approving the Methodological Norms for the application of Law no. 544/2001	Art. 3(1) In order to organize and ensure the free and unhindered access of any person to information of public interest, the public authorities and institutions have the obligation to organize specialized information and public relations compartments or to designate persons with attributions in this field. (2) The specialized information and public relations compartments may be organized within the central or local public authorities or institutions as offices, services, directorates or directorates general, subordinated to the head of the respective public authority or institution, which, depending on the situation, may order their coordination by another person from the direction of the respective public authority or institution. (3) The duties, organization and functioning of the information and public relations compartments shall be established, based on the law and the provisions of these methodological norms, by the regulations of the organization and functioning of the respective public authority or institution.	

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Ordinance no. 27/2002 on regulating the settlement of petitions	Art. 4 The heads of the public authorities and institutions referred to in Art. 2 are directly responsible for the proper organization and conduct of the activity of receiving, highlighting and solving the petitions addressed to them, as well as the legality of the solutions and their communication within the legal term. Art. 5 For the legal settlement of the petitions addressed to them, the heads of the public authorities and institutions notified will arrange for research and detailed analysis of all the issues raised.	
Government Emergency Ordinance no. 109/2011 on Corporate Governance of Public Enterprises	Art. 5 (3) The members of the board of directors are appointed by the tutelage public authority. In the case of the representative of the Ministry of Public Finance, the appointment is made at the proposal of this institution. Art. 6 No persons who, under the law, are incapable or who have been convicted for offenses against the patrimony by failing to trust, corruption offenses, embezzlement, offenses of forgery in documents, tax evasion, offenses under Law no. 656/2002 on the prevention and sanctioning of money laundering, as well as for the introduction of measures for the prevention and combating of terrorism financing, republished, with subsequent amendments. Art. 7 The members of the board of directors may not belong to more than three boards of directors of public enterprises. The public tutelary authority may set a smaller number of boards of directors to which a public enterprise's designated member may participate. Art. 15 (1)The administrator who has interests in a particular operation, directly or indirectly, contrary to the interests of the autonomous company, must notify the other administrators and the internal auditors thereof and not take part in any deliberations concerning this operation. (2)The same is the duty of the administrator if his spouse, his relatives or his in-laws up to the fourth degree inclusively are interested in a certain operation. (4)In order to apply the provisions of paragraphs (1) and (2), the state owned company, through the board of directors, shall establish a policy on conflicts	Art. 15 (3)The administrator who did not comply with the provisions of paragraphs (1) and (2) shall be liable for damages to the state owned company. Art. 16 (5) The action against the administrators is brought by the tutelary public authority through its manager. Art. 53 (1)It is cancellable the juridical act concluded against the interests of the public enterprise by a member of the board of directors or the supervisory board, by a director or, as the case may be, by a member of the board with: a) the spouse, ascendants or descendants, with relatives in collateral line or with the in-laws up to grade IV inclusive; b) administrators or directors or, where appropriate, members of the supervisory board or of directorate, employees, shareholders holding control of the company or of a controlled company; c)the spouse of the persons referred to atpoint b), with their ascendants or descendants, with relatives in collateral

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	of interest and systems for its implementation. To this end, the board of directors shall, within 90 days of the date of appointment, adopt a code of ethics, which shall be annually reviewed if appropriate, being approved by the internal auditor in advance. The Code of Ethics shall be published by the Chairman of the Board of Directors on the website of the state owned company within 48 hours of its adoption and, in the event of revision, on May 31 of the current year. Art. 643(1) The number of representatives of the state or of the administrative-territorial unit in the general meeting of the shareholders in the public enterprises is maximum of two persons. (2) Civil servants, contract staff and persons appointed or elected to public dignity positions may be designated to represent the state or administrative-territorial unit of up to two public enterprises as a member of the general meeting of shareholders, subject to legal provisions on incompatibilities and conflict of interests regulated by Law no. 161/2003 on certain measures for ensuring transparency in the exercise of public dignities, public functions and business environment, prevention and sanctioning of corruption, with subsequent amendments and completions. (3) The public tutelage authorities, who, under their authority, subordination or portfolio, have public enterprises, take measures to ensure their operation under the terms of this article.	line or with in-laws up to grade IV inclusive. (2) According to the Art. 52 (1) and (2), the action for annulment may be brought by any shareholder or the person designated by the general meeting of shareholders within 6 months of the date of acknowledgment of the conclusion of the transaction, but no later than 6 months from the date of the transaction approval by the general meeting of shareholders.
Order no. 1.938/ 2016 regarding the modification and completion of accounting regulations	2. 492^1. - (1) Public interest entities which, at the balance sheet date, exceed the criterion of having an average of 500 employees in the financial year, include in the administrators' report a non-financial statement containing, to the extent they are necessary to understand the development, performance and the position of entity and of the impact of its work, at least environmental aspects, social and personnel information, respect for human rights, the fight against corruption and bribery, including: a) a brief description of the entity's business model; b) a description of the policies adopted by the entity in relation to these matters, including the necessary	4. Point 562 (1)is amended and will have the following content: “562. - (1) Members of the administrative, management and supervisory bodies of an entity, acting within the powers conferred by national law, have collective responsibility to ensure that: a) the individual annual financial statements, the Directors' report and the report referred topoint 492^4; and

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	diligence procedures applied; c) the results of these policies; d) the main risks associated with those matters arising from the entity's operations, including, where relevant and proportionate, its business relationships, products or services that could have a negative impact on those areas, and how the entity manages those risks; e) key non-financial performance indicators relevant to the entity's specific activity. (2) If the entity does not implement policies with respect to one or more of the matters referred to in paragraph (1), the non-financial statement provides a clear and reasoned explanation for this option. (3) The non-financial statement referred to in paragraph (1) shall contain, where appropriate, additional references and explanations regarding the amounts reported in the individual annual financial statements. 3. 556^1. - (1) Public interest entities that are parent companies of a group that, at the balance sheet date on a consolidated basis, exceed the criterion of having an average of 500 employees in the financial year, include in the consolidated report of directors a consolidated non-financial statement containing, in so far as they are necessary to understand the development, performance and position of the group and the impact of its work, information on at least environmental, social and personnel aspects, respect for human rights, the fight against corruption and bribery, including: a) a brief description of the business model of the group; b) a description of the policies adopted by the group in relation to these issues, including the necessary diligence procedures applied; c) the results of these policies; d) the main risks related to these issues arising from the operations of the group, including, where relevant and proportionate, its business relationships, products or services that could have a negative impact on those areas and how the group manages those risks; e) key non-financial performance indicators relevant to specific activities.	b) the consolidated annual financial statements, the consolidated Directors' reports and the report referred to point 556^4 are prepared and published in accordance with the requirements of these regulations.”

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REFERENCES

***selected important legal documents as republished or subsequently amended and supplemented.**

1. Law no. 31/1990 on commercial companies.
2. Law no. 188/1999 on the civil servants statute.
3. Law no. 78/2000 on the prevention, detection and sanctioning of corruption.
4. National Program for Prevention of Corruption and the National Action Plan Against Corruption 2001-2004.
5. Law no. 90/2001 on the organization and functioning of the Government.
6. Law no. 215/2001 on local public administration.
7. Law no. 500/2002 on public finances.
8. Law no. 393/2004 on the Statute of local ellected officials.
9. Law no. 273/2006 on local public finances.
10. Government Emergency Ordinance 109/2011 on Corporate Governance of Public Enterprises.
11. National Anti-Corruption Strategy for 2012-2015.
12. National Action Plan for implementing the National Anti-Corruption Strategy for 2012-2015.
13. National Anti-Corruption Strategy for 2016-2020.

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