

**ORDINANCE NO.119 of 31 August 1999**  
**On Internal Audit and Preliminary Financial Control**  
**(GO119/1999)**

ISSUER: THE GOVERNMENT OF ROMANIA

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Acting in accordance with Article 107 (1) and (3) of Romania's Constitution and with Article 1 point D (26) of Law no.140/1999 empowering the Government to issue ordinances,

The Government of Romania has adopted this Ordinance.

**CHAPTER I**

**General Provisions**

*Article 1*

Scope of the Ordinance

This Ordinance governs internal control, internal audit and preliminary financial control in public organizations, with respect to the use of public funds and the management of public wealth.

*Article 2*

For the purpose of this Ordinance, the terms and phrases hereinafter shall be defined as follows:

a) budget commitment: any act whereby a competent authority by law earmarks public funds for a specific objective;

b) legal commitment: any act with legal effect that results or might result in a liability to the public funds or public wealth;

c) internal audit: an independent activity within a public institution, directly subordinated to the head of the organization, which consists of reviews, inspections and analyses of its own system of internal control, with a view to objectively ascertaining to what extent the system ensures the fulfilment of the objectives of the public organization and the economical, efficient and effective use of resources, as well as in order to report to the top management the findings of such reviews, the shortcomings that have been identified and the proposed steps to set right irregularities and to better the performance of the internal control system;

d) accounting department: organizational structure within a public organization in charge of keeping the accounts, carrying out preliminary financial control and keeping a record of commitments (office, section, department);

e) conformity: the characteristic feature of transactions, administrative acts and deeds within a public organization of being in line with the policy expressly assumed in a particular area by the respective organization or by a higher authority, under the law;

f) accountant: a person who verifies, records and reports, in compliance with the relevant applicable legal provisions, transactions that have been carried out, involving public funds or public wealth;

g) accounting officer: head of the accounting department, in charge of keeping the accounts, carrying out preliminary financial control and keeping a record of commitments, or, as the case may be, one of the persons carrying out such functions within a public organization that does not have an accounting department in its structure or a person performing such functions under a contract, according to the law;

h) preliminary financial control: activity whereby the legality and fairness of transactions involving public funds or public wealth are verified, before the endorsement of such transactions;

i) internal control: all the steps taken at the level of a public organization, in respect of the organizational structures, methods, procedures and systems of control and assessment that have been established in order to: fulfil tasks at an adequate quality level and duly carry out the adopted policies in an economical, efficient and effective manner; observe legality and managerial decisions and instructions; safeguard assets and resources; make and keep accurate and complete accounting records; disclose in due time fair and full information in order to substantiate managerial decisions;

j) delegated controller: civil servant of the Ministry of Finance who independently carries out functions of delegated preliminary financial control, under this Ordinance;

k) cost-effectiveness: the extent to which minimizing the costs of the resources allocated to a particular activity is ensured, without impairing the successful fulfilment the declared objectives of such activity;

l) effectiveness: the extent to which the declared objectives of an activity are fulfilled and the relation between the envisaged and the actual impact of such activity.

m) efficiency: the relation between the actual results and the cost of resources allocated to achieve such results;

n) public funds: amounts allocated from the state budget, the state social security budget, the health insurance budget, the special funds budget, the state treasury budget, the local budgets, the budgets of public organizations funded from non-budgetary incomes, the State Ownership Fund budget, the foreign financial aid granted to Romania or to public organizations, foreign credits contracted or guaranteed by the state or by authorities of the local public administration, as well as domestic loans contracted by authorities of the local public administration;

o) inspection: on site verification of a transaction while it is being carried out, in order to ascertain possible breaches of legality or fairness and in order to take steps likely to safeguard public funds and public wealth and to compensate the loss, as the case may be;

p) public organization: entity defined as such under the law on public finance and under the law on local public finance;

q) legality: characteristic feature of a transaction which abides by all legal provisions that are applicable to it and that are in force when such transaction is performed;

r) transaction: any operation having a financial impact on public funds or on public wealth, irrespective of its nature;

s) timeliness: characteristic feature of a transaction of adequately serving, in given circumstances, the fulfilment of some objectives of the assumed policies;

t) authorising officer: a person authorized by law or having a delegation under the law to order and to approve transactions;

u) public wealth: all the rights and obligations, at a given moment in time, of the state, territorial-administrative units or of their public organizations, having economic value and acquired or assumed by any title. Public wealth shall include rights and obligations related both to property belonging to the public domain and to the private domain of the state and of the territorial-administrative units;

v) transaction project: any document seeking the performance of a transaction, in the form prepared for its approval by the competent authority under the law;

w) fairness: the characteristic feature of a transaction of abiding under every aspect by the overall principles and methodological and procedural rules that are applicable to the respective category of transactions.

### *Article 3*

#### General Objectives of Internal Control

Internal control has the following general objectives:

- to ensure the fulfilment, with the observance of adequate quality standards, of the duties of public organizations, that have been set in accordance with their own mission, in conditions of timeliness, effectiveness, cost-effectiveness and efficiency;
- to safeguard public funds against losses as a result of error, waste, abuse or fraud;
- to ensure the observance of laws, regulations and managerial decisions;
- to develop and maintain some systems for the collection, storage, processing, updating and dissemination of financial and managerial information and data, as well as of systems and procedures of adequate information disclosure, through regular reports.

### *Article 4*

#### Obligations of the Head of a Public Organization in Respect of Internal Control; Requirements of Internal Control

(1) The head of a public organization shall ensure the development, approval, application and improvement of organizational structures, methodological rules, assessment procedures and criteria, in order to meet the general and specific requirements of internal control.

(2) The general and specific requirements of internal control shall be mainly the following:

a) general requirements

- to ensure the fulfilment of the general objectives set out in Article 3 by systematically assessing and by maintaining at an acceptable level the risks associated with structures, programmes, projects or transactions;

- to ensure a cooperative conduct of the managerial and operating staff, that is bound to meet at any time the requests of the management and to effectively support internal control;

- to ensure the integrity and competence of the managing and operating staff, as well as the knowledge and understanding by such staff of the importance and role of internal control;

- to set the specific objectives of internal control, so that they should be adequate, comprehensive, reasonable and integrated to the mission of the organization and its overall objectives;

- to make sure the managerial staff monitors all activities and fulfils the obligation to take corrective, prompt and responsible steps whenever breaches of legality and fairness in conducting transactions are ascertained or whenever activities are carried out in an uneconomical, ineffective and inefficient manner;

b) specific requirements

- to reflect in written documents the organization of internal control, all the transactions of the organization and all significant events, as well as to adequately record and

keep all documents, so that they may be promptly made available to anyone who is entitled to examine them;

- to record without delay and in a fair manner all significant transactions and events;
- to see to it that transactions are approved and carried out only by persons having special powers in this sense;
- to allocate responsibilities for conducting transactions to different people, so that prerogatives for approval, control and registration should be appropriately entrusted to different persons;
- to secure a competent management at all levels;
- to make sure that resources and documents are accessed only by people who are duly authorised to do so and who are in charge of using and keeping such documents.

#### *Article 5*

#### Sound Financial Management

(1) Persons in charge of managing public funds or public wealth shall ensure a sound financial management by safeguarding legality, fairness, cost-effectiveness, efficiency and effectiveness in the use of public funds and in the management of public wealth.

(2) The Ministry of Finance shall be the relevant central public administration authority in charge of working out and implementing policies in respect of financial management. The Ministry of Finance shall provide procedural guidance, coordination and monitoring in order to secure a sound financial management in the use of public funds and the management of public wealth.

### **CHAPTER II**

#### **Provisions on Internal Audit**

#### *Article 6*

#### Organization of Internal Audit

(1) Internal audit shall be organized independently within each public organization as a specialized department employing one or several persons, so that the specialist staff in such department, hereinafter called internal auditors, are in no way involved in activities that are reviewed.

(2) Internal auditors shall fulfil their duties in an unbiased, independent manner, in full integrity and professionalism, according to provisions in this Ordinance and pursuant to specific norms and procedures governing audit activities. Internal auditors shall abide by the provisions of the code of ethics, as well as by the norms and instructions that are approved by Order of the Finance Minister.

(3) In carrying out his/her duties, the head of the internal audit department or, as the case may be, the person having powers of internal audit shall be directly subordinated and accountable to the head of the public organization.

## *Article 7*

### Scope of Internal Audit and Duties of the Internal Audit Department

(1) Internal audit shall be exercised in respect of all activities carried out by the public organization or which are part of its responsibility, including in respect of activities performed by subordinated institutions and in respect of the use by third parties, irrespective of their legal status, of public funds that are managed by the latter on the basis of funding provided by the public organization concerned or by an institution subordinated to it.

(2) Transactions that are subject to internal audit shall be, as a rule, verified throughout their duration, starting with the initiation of a transaction and up to its actual finalization.

(3) The internal audit department shall perform, without nevertheless limiting itself to it, the following functions:

a) quarterly and annual certification, accompanied by the audit report, the balance sheet and the budget account statement of the public organization, after checking the legality, reliability and accuracy of accounting records and of financial statements; certification shall take place before the endorsement by the head of the public organization concerned of the balance sheet and of the budget account statement.

b) review of the legality, fairness and conformity of transactions, uncovering of errors, waste, mismanagement and fraud and, on this basis, proposal of steps and solutions to recover losses and to enforce penalties on those guilty, as the case may be;

c) monitoring the fairness of decision substantiation systems, planning, programming, organization, coordination, surveillance and control of the way in which decisions are fulfilled;

d) appraisal of the cost-effectiveness, efficiency and effectiveness of the way in which managerial and operating systems, existing within a public organization or at the level of a programme/project funded out of public money, use the financial, human and material resources in order to fulfil its objectives and to achieve the planned results;

e) identification of the weak points of the managerial and control systems, as well as of the risks associated with such systems, programmes/projects or transactions, and the proposal of steps to set them right and to diminish risks, as the case may be.

## *Article 8*

### Conducting Internal Audit

(1) The head of the public organization shall endorse the internal audit annual plan.

(2) The audit plan shall be set after appraising the risks associated to various structures, activities, programmes/projects or transactions, as well as after consultations with the higher organizations.

(3) The audit plan shall be worked out on the basis of uniform recommendations made by the Ministry of Finance, in consultation with the Court of Auditors. The uniform recommendations shall be approved by Order of the Minister of Finance.

(4) Internal auditors shall conduct their activities on the basis of an appointment order signed by the head of the public organization, which explicitly sets out the scope, objectives and duration of audit.

(5) Internal auditors shall have access to all data and information that are deemed relevant for the scope and objectives specified in the appointment order, while the managerial and operating staff involved in the activities under review are bound to submit all requested documents and to lend the necessary support, so that internal audit be smoothly conducted.

(6) The findings of internal audit shall be included in the internal audit report that must contain references to the appointment order, the unfolding of the audit, the findings of the review, the conclusions and recommendations made by the internal auditors, together with all the supporting documents for such findings, conclusions and recommendations. Also to be presented alongside the internal audit report shall be the points of view of those involved in the audited activities, particularly of those in respect of whom irregularities are reported or those who may be affected by the steps recommended in the internal audit report.

(7) Whenever conducting an internal audit pursuant to an appointment order implies some specialized knowledge from other domains than those provided for in the job description of the internal auditors, the head of the internal audit department, subject to the approval of the head of the public organization he is accountable to, may outsource consultancy/appraisal services.

(8) The internal audit report shall be signed by the auditors on each page, shall be recorded and kept in its original copy in specially designed files for ten years. The representatives of the Court of Auditors are entitled to examine the internal audit reports.

#### *Article 9*

#### **Procedural Guidance and Coordination of Internal Audit**

(1) The Ministry of Finance shall provide procedural guidance of the internal audit activity in all public organizations and shall make available training and further training facilities to internal auditors. The Minister of Finance shall approve the code of ethics of the internal auditor, as well as norms and instructions.

(2) The Ministry of Finance can check, through regular analyses, on the observance of the norms and instructions provided for under paragraph (1) by the internal audit departments established within the other public organizations, as well as on the observance by the internal auditors of the code of ethics, and can initiate the required corrective measures, in conjunction with the heads of the public organizations concerned.

### **CHAPTER 3**

#### **Provisions on Preliminary Financial Control**

##### **Section 1**

#### **General Provisions on Preliminary Financial Control**

##### *Article 10*

#### **Scope of Preliminary Financial Control**

(1) Preliminary financial control shall mainly cover transaction projects in respect of:

- a) legal and budget commitments
- b) the opening and allocation of budget credits
- c) changing the allocation by quarters and by sub-divisions of the budget classification of endorsed credits, including by credit transfers;
- d) making payments out of public funds;
- e) cash receipts;
- f) sale, pledging, concession or leasing of property belonging to the private domain of the state or to the territorial-administrative units;
- g) concession or lease of property belonging to the public domain of the state or of territorial-administrative units;
- h) other types of transactions, established by order of the Minister of Finance.

(2) Depending on the specific traits of the public organization, its head can decide on conducting preliminary financial control in respect of other types of transaction projects than those set out in paragraph (1).

#### *Article 11*

#### Content of Preliminary Financial Control

Preliminary financial control shall consist of a systematic check of transaction projects that are subject to it under Article 10 in respect of:

- a) legality and fairness;
- b) observance of the limits of budget commitments set under the law.

#### *Article 12*

#### Organization of Preliminary Financial Control

(1) Preliminary financial control shall be uniformly organised and conducted according to the provisions of this Ordinance and of the normative acts issued for its enforcement by the relevant authorities.

(2) Preliminary financial control shall be organised and conducted as follows:

- a) own preliminary financial control;
- b) delegated preliminary financial control, through delegated controllers of the Ministry of Finance.

### **Section II**

#### **Provisions on Own Preliminary Financial Control**

#### *Article 13*

(1) Public organizations shall organize their own preliminary financial control and recording of their commitments within the accounting department.

(2) Heads of public organizations shall establish the transaction projects that are subject to preliminary financial control pursuant to Article 10, the supporting documents and their flow, according to legal provisions.

(3) Records of the commitments shall be organized, kept and reported according to the procedural rules approved by order of the Minister of Finance.

(4) The Ministry of Finance shall also organize own preliminary financial control for transactions related to the state treasury budget, transactions in respect of the public debt and other transactions that are specific to the Ministry of Finance.

(5) The organization's own the accounting officer, who shall endorse such a control, shall exercise preliminary financial control. Depending on the volume and complex nature of the activity, the accounting officer, subject to the approval of the authorising officer, can empower other persons subordinated to him/her to conduct the own preliminary financial control, spelling out the limits of such powers.

(6) The appointment of the accounting officer shall be subject to the uniform criteria and conditions approved by order of the Minister of Finance. The dismissal, suspension from office or replacement of the accounting officer shall be subject to the approval of the authorising officer in the higher public organization or of the main authorising officer, as the case may be.

#### *Article 14*

##### Own Preliminary Financial Control Seal of Approval

(1) The transaction projects that fully meet the requirements of legality, fairness and observance of the limits of the approved budget commitments, which were given the own preliminary financial control seal of approval, shall be the only one to be submitted for endorsement by the authorising officer.

(2) The own financial preliminary control seal of approval shall consist of the signature of the duly authorised persons, who are competent under this Ordinance, who are also due to affix their personal seal.

(3) For the own financial control seal of approval to be affixed, the transaction projects need to be accompanied by the appropriate supporting documents, whose legality and accuracy are certified by the signature of the heads of the specialised departments that initiate the respective transaction.

(4) The heads of the specialised departments provided for in paragraph (3) shall bear responsibility for the accuracy, fairness and legality of the transactions whose supporting documents they have certified. The own preliminary financial control seal of approval that has been affixed on documents containing inaccurate or false data and/or which subsequently turn out to be illegal shall not exonerate from responsibility the heads of the specialised departments that drafted such documents.

(5) The persons who are entitled to carry out own preliminary financial control shall have joint and several responsibility for the legality, fairness and observance of the limits of budget

commitments in respect of the transactions bearing the own preliminary financial control seal of approval.

(6) If, according to legal provisions, transactions need to be endorsed by the legal department, the transaction project shall be submitted to own preliminary financial control after the legal department issues an opinion. The persons who are authorised to conduct own preliminary financial control may request the opinion of the legal department whenever they deem it necessary.

#### *Article 15*

#### Separation of powers

(1) Any person exercising own preliminary financial control shall not be involved, by his/her office duties, in carrying out transactions that are subject to own preliminary financial control.

(2) The position of authorising officer shall be incompatible with the position of accounting officer/accountant.

### **Section III**

#### **Provisions on Delegated Preliminary Financial Control**

#### *Article 16*

#### Organization of Delegated Preliminary Financial Control

(1) Delegated preliminary financial control shall be organized and conducted by the Ministry of Finance through delegated controllers.

(2) The Minister of Finance shall appoint, for each public organization where the function of main authorising officer of the state budget, the state social security budget or the budget of any special fund, is exercised, one or several delegated controllers, depending on the volume and complexity of the activities performed by the public organization concerned. Likewise, the Minister of Finance shall appoint one or several delegated controllers for transactions carried out through the state treasury budget, for transactions in respect of the public debt and for other operations specific to the Ministry of Finance. The delegated controller shall be appointed by Order of the Minister of Finance.

(3) The procedural rules endorsed by the Minister of Finance shall determine:

- a) the types of transactions of the main authorising officers, whose projects shall be subject to delegated preliminary financial control;
- b) the value limits, by types of transactions, above which delegated preliminary financial control shall be carried out;
- c) the supporting documents that must accompany various types of transactions;
- d) the way in which delegated preliminary financial control must be carried out for each type of transaction.

(4) The types of transactions that are subject to delegated preliminary financial control and, as the case may be, the value limits corresponding to them can differ from one public organization to another.

(5) Delegated controllers shall affix a delegated preliminary financial control seal of approval on all transactions projects that have been previously endorsed by the own preliminary financial control of the public organization.

(6) Delegated controllers shall conduct their activity at the seat of the public organizations where they have been appointed. The public organizations provided for in paragraph (2) shall assure to the delegated controller(s) working premises and the necessary equipment, as well as the cooperation of the own staff, particularly of the accounting department, for a smooth performance of functions of delegated preliminary financial control.

(7) In case of a temporary absence from office of a delegated controller, the Minister of Finance shall appoint a delegated controller to fulfil the functions of the first controller, throughout his absence.

#### *Article 17*

##### Delegated Preliminary Financial Control Seal of Approval

(1) Transactions that, pursuant to Article 16, paragraphs (3) and (4), are subject to delegated preliminary financial control, shall be submitted for approval by the main authorising officer only provided they have the seal of approval of delegated preliminary financial control.

(2) The delegated preliminary financial control seal of approval shall be granted or denied in writing, on a standard form, and shall bear the signature and personal seal of the relevant delegated controller.

(3) Before denying such a seal of approval, the delegated controller shall notify his/her intention in writing to the main authorising officer, stating the grounds for such denial. If the main authorising officer presents arguments in writing in favour of carrying out the transaction in respect of which denial of approval is envisaged, the delegated controller, before formally registering such denial, shall ask for a neutral opinion on the case, to be given by a team made up of 3 delegated controllers from public organizations other than the one concerned, such team being set up on an ad-hoc basis, with the assistance of the chief financial controller. The neutral opinion shall be documented, formulated in writing and shall have a consultative role, the final solution being the exclusive competence of the relevant delegated controller, according to the principle of the independent exercise of the powers of delegated preliminary financial control.

#### *Article 18*

##### Duration of Delegated Preliminary Financial Control

(1) Delegated preliminary financial control shall be carried out in the shortest possible time, allowed for by the actual duration of the necessary checks, so that it does not affect the smooth and timely performance of the transaction whose project is subject to delegated preliminary financial control.

(2) The maximum period for granting or, as the case may be, denying seal of approval of the delegated preliminary financial control, shall be of maximum 3 working days after submitting the transaction project, accompanied by the supporting documents.

(3) The period provided for in paragraph (2) shall be suspended as from the time of notification set out in Article 17 paragraph (3) until an answer is received from the main authorising officer.

(4) In special circumstances, the delegated controller shall be entitled to extend the period provided for in paragraph (2) by 5 working days at the most, based on a documentary report that such controller is bound to send to the chief financial controller and to the main authorising officer, for their information.

## **Section IV**

### **Provisions on Delegated Controllers**

#### *Article 19*

(1) The delegated controller shall be a civil servant, employed by the Ministry of Finance. The number of delegated controller positions shall be decided upon by the Minister of Finance, depending on the needs, within the limits of the approved annual budget and of the total number of posts.

(2) Any person who is to be employed as delegated controller shall have an economic or a law degree, and a length of service in public finance of at least 7 years. Candidates for the position of delegated controller shall submit their criminal record, as well as information and credentials indicating that they have an appropriate professional and moral standing to meet the requirements for that post.

#### *Article 20*

### **Incompatibilities**

(1) Delegated controllers shall not be the spouses, next of kin or in-laws up to the fourth degree, included, of the authorising officer that appoints them.

(2) Delegated controllers shall not conduct, directly or through intermediaries, trade activities and shall not take part in the management of or be on the board of business or civil organizations. They cannot act as legal experts or as arbitrators designated by the parties in an arbitration case.

(3) The delegated controller position shall be incompatible with any other public or private office, except for didactic posts in higher education institutes.

(4) Delegated controllers shall not be members of political parties and shall not be allowed to undertake public activities of a political nature.

(5) The delegated controller who shall find himself/herself in one of the situations described in paragraphs (1)-(5) is bound to immediately inform in writing the Minister of Finance and the chief financial controller.

#### *Article 21*

##### Duties of the Delegated Controller

(1) Delegated controllers shall mainly have to:

- a) carry out delegated preliminary financial control in respect of the transaction projects of the main authorising officer, pursuant to the appointment order and with the procedural rules approved under this Ordinance;
- b) monitor the organization, keeping, updating and reporting of commitments records;
- c) directly inform the Minister of Finance, through monthly reports, on the correct situation of commitments, on the seal of approvals given or on denial of such approvals; a copy of the respective reports shall be always forwarded to the chief financial officer and to the main authorising officer they are appointed by;
- d) issue consultative opinions, at the request of the main authorising officer they are appointed by, or at the request of the Minister of Finance, as well as self-initiated opinions on the conformity, cost-effectiveness, efficiency or effectiveness of some transactions or of draft normative acts;
- e) draft proposals and projects for the improvement of preliminary financial control;
- f) take part in the activities of the delegated controllers' body;
- g) fulfil other duties, set out by order of the Minister of Finance.

(2) Delegated controllers shall not have their say on the timeliness of transactions that are subject to delegated preliminary financial control.

(3) Delegated controllers shall fulfil their functions in good faith and in full responsibility. For actions carried out in good faith and in the line of duty, without going beyond their competence, delegated controllers shall not be sanctioned or changed from office.

(4) Delegated controllers shall carry out their functions independently. They shall be directly accountable to the Minister of Finance and shall in no way be forced to affix or deny the seal of approval of delegated preliminary financial control.

(5) Delegated controllers shall not disclose state and trade secrets and shall observe confidentiality in respect of the facts, information and documents that come to their knowledge in the line of duty.

(6) The delegated controller's performance shall be appraised annually through scores, given on the basis of information contained in the annual reports on the performance of delegated controllers, internal audit reports and reports of the Court of Auditors. The annual scores received by each delegated controller shall be kept on record throughout his/her term of office. The Minister of Finance shall immediately dismiss the delegated controller whose performance is assessed as "poor" or who gets a "satisfactory" score for three years in a row.

(7) Delegated controllers shall be liable for any irregularity in respect of their duties, according to the provisions in force.

## *Article 22*

### Professional Grades and Payment of Delegated Controllers

- (1) Depending on the professional performance attested by the scores awarded as a result of the annual assessment and depending on the length of service, delegated controllers shall be employed in grades I, II and III. The minimum requirements and the conditions of promotion from one professional grade to another shall be set by Order of the Minister of Finance.
- (2) The basic salaries, bonuses and other entitlements shall be determined by assimilation with the financial controller position in the structures of the Court of Auditors, for grades I, II and III, respectively.
- (3) The chief financial controller shall receive a management allowance whose amount shall be equivalent to the one received by a director general in the Ministry of Finance, while deputy financial controllers shall be entitled to receive an amount similar to that earned by a director in the Ministry of Finance.

## *Article 23*

### Body of Delegated Controllers

- (1) The body of delegated controllers shall be organized as a distinct unit within the structure of the Ministry of Finance and shall include all the delegated controllers.
- (2) The body of delegated controllers shall mainly safeguard:
  - a) the implementation and development of the advanced principles and practices of good financial conduct;
  - b) cooperation and professional exchanges among delegated controllers;
  - c) cooperation and professional exchanges with other relevant external and international structures.
- (3) The chief financial controller shall head the body of delegated controllers.
- (4) The chief financial controller shall have two deputies.
- (5) Also within the Ministry of Finance and subordinated to the chief financial controller there is also a unit whose staff is not made up of delegated controllers and whose functions are established by the Minister of Finance.
- (6) The chief financial controller and his/her deputies shall be appointed by Government Decision for a 6-year term, based on a nominal proposal put forward by the Minister of Finance, after interviewing 6 candidates nominated from among the delegated controllers by the body of delegated controllers in a plenary meeting, by simple majority. At the date of the plenary meeting for the designation of the 6 candidates, it is compulsory for the number of delegated controllers, who are actually employed and who are actually present at the meeting, to account for at least half the number of delegated controller posts, set according to provisions in Article 19 (1).

(7) One person shall not serve more than one term in office as chief financial controller; also, one person shall not serve more than one term in office as deputy financial controller.

(8) The chief financial controller shall mainly have to:

- a) uphold, before the Minister of Finance, the Government and other authorities, as the case may be, the solutions identified in the line of duty by any of the delegated controllers;
- b) organize the information system and monitor the actual and timely exchanges of information among delegated controllers;
- c) assure the drafting of neutral opinions, as provided for in Article 17 paragraph (3);
- d) organize and monitor the collection, processing and statistical recording of information about delegated preliminary control activities and carry out an assessment of such activities;
- e) order measures for the enforcement in the delegated controllers' activity of the advanced principles and practices of good financial conduct and for turning to best account their proposals and contributions to the development and improvement of standards in the field;
- f) assure procedural guidance in the field of preliminary financial control;
- g) submit to the Government, by the end of the first quarter of the current year, an annual report for the previous year on the performance of delegated controllers; the report shall include, among other things, an analysis, from the vantage point of previous years, of the way of resolving cases in which the delegated preliminary financial control seal of approval was denied, as well as proposals to improve the financial legislation;
- h) assess the performance of each delegated controller and propose to the Minister of Finance the annual scores that are to be given;
- i) carry out other duties, set under Order by the Minister of Finance.

## **Section V**

### **Denial of the Seal of Approval**

(1) The person entitled to affix the preliminary financial control seal of approval shall have the right and the obligation to deny such endorsement whenever, as a result of verification, such person shall consider that the transaction project which is subject to preliminary financial control does not meet the conditions of legality, fairness and observance of the budgetary commitments limits that are required for such an approval to be granted.

(2) Any denial of the approval shall be in all cases motivated in writing.

(3) The persons who are entitled to give a preliminary financial control seal of approval shall be bound to keep track of the transaction projects that were not endorsed.

### *Article 25*

Authorising transactions for which preliminary financial control seal of approval was denied

(1) A transaction that was denied the preliminary financial control seal of approval can be carried out only if authorised by a Government Decision, at the proposal of the public organization within the central public administration which exercises the main authorising officer function, whose transaction was not endorsed, after the chief financial controller

presents to the Government members in session the point of view of the delegated controller concerned. The Government shall have its say no later than 15 working days after registration of the draft decision at the Government General Secretariat. The initiator of the draft decision shall have to notify the Minister of Finance and the chief financial controller thereof, and shall have to submit to them a copy of the draft decision and of the substantiation note at least 5 working days before the draft is discussed in Government sitting.

(2) For transactions that are not subject to delegated preliminary financial control pursuant to this Ordinance, the main authorising officers of the public organizations provided for in paragraph (1) can order, assuming responsibility for this, that the transaction which was denied the seal of approval of own preliminary financial control be carried out, provided it does not exceed the endorsed budgetary commitment.

(3) For public organizations, other than the ones provided for under paragraph (1), the authorising officer can order, assuming responsibility for it, the carrying out of the transaction for which the own or delegated preliminary financial control seal of approval was denied, provided that such transaction does not exceed the endorsed budgetary commitment.

(4) In all cases in which, as a result of a denial of the own preliminary financial control seal of approval, the authorising officer orders that the transaction be carried out, assuming responsibility for it, the accounting officer shall be bound to notify in writing the decentralized public services of the Ministry of Finance, at county level or at the level of the Bucharest municipality, respectively, and, as the case may be, the higher body of the public organization, this being the only way that exonerates both the authorising officer and the other persons authorised by it to carry out own preliminary financial control, of any responsibility.

(5) Documents concerning transactions that are subject to preliminary financial control and that failed to be endorsed cannot be accounted for.

(6) Excepted from the provisions in paragraph (5) shall be documents in respect of transactions for which the seal of approval for own or delegated financial control has been denied, but that have nevertheless been carried out after the authorising officer assumed responsibility for it, as well as transactions for which the delegated preliminary financial control seal of approval was denied, yet such transaction were authorised by Government decision.

(7) Documents concerning transactions carried out pursuant to paragraph (6) shall be distinctly entered in an off-balance sheet account.

## **CHAPTER 4**

### **Common Provisions**

#### *Article 26*

##### Operative measures

(1) The Ministry of Finance shall carry out checks whenever there are any signs of irregularities or breaches of legality in performing transactions, in the meaning of this Ordinance.

(2) The Ministry of Finance shall carry out checks in all the cases when it is notified by a accounting officer of the performance of transactions that do not have a preliminary financial control seal of approval and are still performed after the authorising officer assumes responsibility for them.

(3) Checks shall be conducted by employees of the Ministry of Finance, pursuant to an appointment order issued by the Minister of Finance or by persons delegated to this effect by the Minister of Finance.

(4) The appointment order provided for in paragraph (3) shall compulsorily specify the scope and objectives of the inspection, its duration, the person or persons designated to carry out the check.

(5) Public organizations shall have to assure the access of representatives of the Ministry of Finance to all documents, data and information that are relevant for the scope and objectives of the check, to the inspection of assets that make the object of transactions under review, as well as to the premises where such assets or relevant documents or information are located.

(6) The organization of inspections and the establishment of the general prerogatives for their performance shall be endorsed by Government decision, while details about such powers, the information flow and the working methodology shall be set out in an Order by the Minister of Finance.

(7) The document that outlines the findings of such inspections can be challenged by the controlled entity. The deadline and the place where such an appeal is to be lodged, as well as the procedure and the deadline for resolving it, shall be set by procedural rules endorsed by Order of the Minister of Finance.

(8) If according to the assessment report there is a breach of legality or irregularities which have impaired or might impair public funds or public wealth, and the respective document has not been challenged in due time, or if the appeal was rejected or if it was accepted elsewhere, the person issuing the appointment order provided for in paragraph (3) shall have to notify the Court of Auditors, that is to decide on the steps that need to be taken. The notification shall be made in the form of a report and must be accompanied by: the assessment report, the acts, documents and evidence that have supported the findings, as well as the appeal that was lodged and the decision for the resolution of such an appeal.

#### *Article 27*

#### Special Measures

If an agreement, treaty or other such documents of external funding provide for specific measures of financial control, the Government shall be authorized to issue, upon the proposal of the Ministry of Finance, decisions that waiver this Ordinance.

#### *Article 28*

Provisions in respect of the internal audit of public organizations with a small number of posts

(1) In the case of a public organization with a number of posts lower than 25, the higher body to which such organization is subordinated can decide not to organize a distinct structure for audit activities. In this case, the internal audit unit of the higher body shall assure the internal audit of the public organization concerned.

(2) The public organization that has a number of posts lower than 25, yet is not subordinated to another public organization, can decide not to set up distinct structures for the internal audit activities. The head of the public organization that has decided not to organize audit activities shall be bound to request the quarterly and annual certification of the balance sheet and of the budget account statement by designated persons from the decentralized public services of the Ministry of Finance or on the basis of a contract concluded by the public organization concerned with agreed natural or legal persons, according to the procedural rules approved by Order of the Minister of Finance.

#### *Article 29*

Provisions in respect of régies autonomes, trading companies with a majority state interest and trading companies that enjoy exclusive or special rights

(1) The accounting officers of the régies autonomes, trading companies wherein the state or another authority of the local public administration holds more than 70% of the voting rights in the general assembly, as well as of commercial companies that enjoy exclusive or special rights granted by a public organization, shall be appointed with the observance of the uniform conditions and criteria, approved by Order of the Minister of Finance. The accounting officers of these régies autonomes and commercial companies shall be dismissed, suspended or changed from office subject to the approval of the head of the public organization that coordinates the régies autonomes, who, on behalf of the state or of an authority of the local public administration, shall exercise the shareholder's rights in the commercial companies wherein the state or an authority of the local public administration holds over 70% of the voting rights in the general assembly or who has granted exclusive or special rights to the commercial company.

(2) Internal auditors of public organizations shall be entitled to conduct internal audit activities on:

- a) régies autonomes coordinated by the public organization concerned;
- b) trading companies wherein the public organization concerned exercises, on behalf of the state or of an authority of the local public administration, the rights of the majority shareholder, if the state or an authority of the local public administration holds over 70% of the voting rights in the general assembly of that trading company;
- c) trading companies that have been granted exclusive or special rights by the public organization concerned.

#### *Article 30*

The delegated preliminary financial control of transactions running a high risk

By Order, the Minister of Finance can decide on the exercise of delegated preliminary control by delegated controllers also on the transactions funded or co-financed out of public funds of other public organizations than those provided for in Article 16 paragraph (2) or of private legal persons.

## *Article 31*

### Miscellaneous Provisions

The provisions of this Ordinance shall also apply to other legal persons than the public organizations, if such legal persons manage public funds under any title and/or manage public wealth with respect to the management of public funds and of the public wealth concerned.

## **CHAPTER 5**

### **Contraventions and Sanctions**

## *Article 32*

### Contraventions

The following deeds shall be considered contraventions, unless they are committed in such conditions as to be considered, under the criminal law, offences:

- a) infringement of the obligation to have, at the level of the public organization, updated and effective organizational structures, procedural rules, assessment criteria and procedures set up by approval of the head of the organization;
- b) failure to organize, within 90 days after this Ordinance takes effect, internal audit activities pursuant to Article 6 paragraph (1);
- c) endorsement of the balance sheet and of the budget account statement without certification and without an audit report;
- d) the auditors' invoking a non-existent appointment order with a view to conducting audit activities in respect of the use by third parties of public funds managed by such parties on the basis of funds made available by the public organization concerned or by an organization subordinated to it;
- e) failure to comply with the obligations provided for in Article 13 (2);
- f) failure to comply with the obligations provided for in Article 13 (3);
- g) submitting for approval by the authorising officer of transaction projects that have not been endorsed by preliminary financial control;
- h) going beyond the deadline provided for in Article 18 (2)-(4);
- i) non-observance of the provisions in Article 21 (5);
- j) failure to motivate the denial of a seal of approval;
- k) non-observance of provisions in Article 25 (5);
- l) non-observance of provisions in Article 25 (7);
- m) failure to order a check pursuant to Article 26 (2);
- n) failure to notify the Court of Auditors according to Article 26 (8).

## *Article 33*

### Sanctions for Contraventions

Contraventions set out in Article 32 c) -i) and k) shall be sanctioned with a fine of 30,000,000 lei to 50,000,000 lei, while those set out under a), b), j) and l) -n) with a fine of 10,000,000 lei to 20,000,000 lei.

#### *Article 34*

Appraisal of contraventions, determination and enforcement of fines, updating the level of fines

- (1) The appraisal of contraventions and the enforcement of sanctions shall be made by the authorised representatives of the Ministry of Finance.
- (2) The level of fines provided for in Article 33 shall be updated by Government decision, depending in the inflation rate.
- (3) Fines provided for as sanctions for committing contraventions set out in Article 32 can be enforced both on natural and legal persons.
- (4) Contraventions set out in Article 32 shall be governed by Law no. 32/1968 on determination and sanctions applicable to contraventions, subsequently amended, except for the provisions in Articles 25 – 27.

### **CHAPTER 6**

#### **Transitory and Final Provisions**

Employment in the delegated controller position of persons holding the title of financial controller in the structure of the Court of Auditors

- (1) Any person who at the date of the publication of this Ordinance holds the title of financial controller within the preliminary control section of the Court of Auditors shall be entitled to be employed, as from 1 January 2000, at his/her request, directly in the professional grade he/she has in the structure of the Court of Auditors, without having to take a competitive exam, yet only provided that the person concerned:
  - applies for being employed as delegated controller in the structure of the Ministry of Finance within 15 days at the most from the date of publication of this Ordinance;
  - does not find himself/herself in one of the incompatibility situations set out in Article 20;
  - has not been sanctioned throughout his/her term of office as financial controller in the structure of the Court of Auditors.
- (2) Cessation of the powers of the Court of Auditors in respect of preliminary financial control, as provided for in Article I subparagraphs 3, 4, 10, 11 and 21 of Law no. 99/1999 on measures to step up economic reform, shall take effect as from 1 January 2000.

#### *Article 36*

Measures for the appointment of the first chief financial controller and of his/her deputies

- (1) The chief financial controller and his/her deputies shall be appointed, pursuant to Article 23 (6), by the date of 29 February 2000, but no sooner than 31 January 2000.
- (2) Until the provisions of paragraph (1) are enforced, the powers of chief financial controller shall be exercised by a person empowered to this effect by Order of the Minister of Finance.

### *Article 37*

#### Exceptional Measures

(1) In order to assure the delegated preliminary financial control of transactions performed by public organizations and by units that have the status of implementing agencies under the financing memorandums concluded by the Government of Romania with the European Commission, as well as of transactions of the national Fund, the Minister of Finance shall appoint one delegated controller for each implementing agency and for the national Fund.

(2) In order to assure the delegated preliminary financial control pursuant to paragraph (1), the provisions of this Ordinance shall apply, except for the rules and regulations on the neutral opinion, provided for under Article 17 (3), which are applicable as from 1 January 2000.

(3) The internal audit activity in implementing agencies or in public organizations that coordinate implementing agencies, as well as in the national Fund, shall be organized in keeping with the requirements of the financing memorandums and of the memorandums of understanding, with the assent of the Minister of Finance.

### *Article 38*

#### Preparatory measures for the enforcement of this Ordinance

The Ministry of Finance shall initiate and coordinate the necessary steps to prepare for the enforcement of this Ordinance; to this effect, the Minister of Finance shall issue orders and, as the case may be, shall put forward draft decisions, to be endorsed by the Government.

### *Article 39*

#### Coming into force of this Ordinance

This Ordinance shall come into force as from 1 January 2000, with the following exceptions:

- a) the provisions of Articles 19, 20, 22, Article 23 (1), (2) and (5), Article 35 and Article 38, which shall take effect upon the date of their publication;
- b) the provisions of Article 36 (2) and Article 37, which shall take effect within 30 days after their publication.

### *Article 40*

#### Repeals

At the date this Ordinance takes effect, Article 2, Article 5 letter a) and other provisions on public organizations in Law no. 30/1999 concerning the organization and functioning of financial control and of the financial police, published in the Official Journal of Romania, Part I, no. 64 of 27 March 1991, shall be repealed.

PRIME MINISTER  
RADU VASILE

Countersigns:  
For the Minister of Finance,  
Bujor Bogdan Teodoriu  
State Secretary