



REPUBLIC OF SAN MARINO

DECREE-LAW no. 89 of 11 June 2014

(Ratifying Decree-Law no. 45 of 31 March 2014)

We the Captains Regent of the Most Serene Republic of San Marino

Having regard to Decree-Law no. 45 of 31 March 2014 "Provisions on the tasks and functioning of the National Central Bureau of ICPO-Interpol", which was promulgated:

Having regard to the conditions of need and urgency referred to in Article 2, paragraph 2, letter b) of Constitutional Law no. 183 of 15 December 2005 and Article 12 of Qualified Law no. 184 of 15 December 2005 and more precisely:

- *the need to regulate the tasks, powers and functioning of the National Central Bureau of ICPO-Interpol (NCB) in order to guarantee that the provisions of Decree-Law no. 21 of 27 February 2014 be effectively enforced, pursuant to the commitments undertaken with the ratification, through Parliamentary Decree no. 120 of 7 August 2012, of the Monetary Agreement between the Republic of San Marino and the European Union, signed in Brussels on 27 March 2012;*
- *the urgency to introduce the above-mentioned regulation, considering that the NCB has received requests for cooperation and exchange of information under said Decree-Law no. 21/2014, and in view of next assessment visit by ICPO-Interpol General Secretariat in June 2014, in the framework of which compliance with its recommendations will be assessed, in particular the transposition into the domestic legal system of a specific legislation regulating the NCB;*

Having regard to Congress of State Decision no. 31, adopted during its sitting of 24 March 2014;

Having regard to the amendments to the above-mentioned Decree, which were introduced at the time of its ratification by the Great and General Council in its sitting of 6 June 2014;

Having regard to the Decision of the Great and General Council no. 15 of 6 June 2014;

Having regard to Articles 8 and 9, paragraph 5 of Qualified Law no. 186/2005;

Promulgate and order the publication of the final text of Decree-Law no. 45 of 31 March 2014 as modified following the amendments approved by the Great and General Council at the time of its ratification:

PROVISIONS ON THE TASKS AND FUNCTIONING OF THE NATIONAL CENTRAL BUREAU OF ICPO-INTERPOL

Art. 1

(Functions of the National Central Bureau)

1. The National Central Bureau, hereinafter NCB, belonging to the International Criminal Police Organization, hereinafter ICPO,

is established in the Republic of San Marino under Article 32 of ICPO-Interpol Constitution, as accepted by the Republic of San Marino with Parliamentary Decree no. 125 of 24 November 2006. The NCB is the national central authority responsible for establishing contacts with the competent offices and authorities of foreign States with regard to collaboration in criminal police and security matters, while respecting the competences of the Judicial Authority and in compliance with what expressly envisaged by the legislation in force and under the bilateral and multilateral agreements signed and ratified by the Republic of San Marino.

2. In conformity with ICPO-Interpol Constitution and General Regulations, the NCB shall perform the following functions:

- a) to ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the “Universal Declaration of Human Rights” adopted by the General Assembly of the United Nations on 10 December 1948;
- b) to establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes;
- c) to perform the functions of Currency Anti-counterfeiting Central Office (CACO) under Article 3 of Law no. 101 of 29 July 2013;
- d) to perform the functions of Asset Recovery Office (ARO) under Decree-Law no. 21 of 27 February 2014.

Art. 2

(Powers and tasks of the NCB)

1. For the purposes of performing its functions, while respecting the competences of the Judicial Authority, the NCB shall:

- a) have the power to access, through the subjects indicated in Article 3, paragraphs 1 and 2, any information necessary to establish the forms of collaboration and exchange of information required to perform its functions, including, with regard to its tasks as ARO, information held by financial operators;
- b) be responsible for the technical and operational application of international conventions and bilateral and multilateral agreements signed and ratified by the Republic of San Marino in the field of international police cooperation;
- c) guide and ensure the operations for the active and passive extradition of prisoners, exchange of information in relation to international police activities and operational activities carried out by Police Corps involving international police cooperation;
- d) collect data, information and suggestions relative to its activities and, if requested, collaborate in international legal assistance procedures, also for the search and capture of fugitives, in all areas of criminal police;
- e) be responsible for exchange of police information and identification marks with the National Central Bureaus of other States, ICPO-Interpol Secretariat General and San Marino Judicial Authority;
- f) be responsible for relations and exchange of police information with liaison officers for police issues at foreign embassies;
- g) guarantee, possibly with the assistance of the Operational Units of Police Corps, its presence and/or on-call service 24 hours a day, including during holidays and pre-holiday periods, with a view to receiving all requests from ICPO-Interpol and, if necessary, transmit them to the competent Police Corps;
- h) participate in the works of ICPO-Interpol and in the meetings of International Organisations where criminal police and security issues are discussed.

Art. 3

(Relations with the overall public sector, CBSM, FIA and Police Forces)

1. The NCB shall promptly perform the tasks of international technical and operational police cooperation and meet the needs of San Marino Judicial Authority in the performance of its functions, by establishing relations with:
 - a) the Police Department;
 - b) the Police Corps, with particular reference to access to information and documents held by public and private subjects;
 - c) the Central Bank of the Republic of San Marino, hereinafter CBSM, and the Financial Intelligence Agency, hereinafter FIA, for banking and financial matters.
2. The NCB shall also rely on the collaboration of Organisational Units of the Public Administration, as well as of Bodies and Autonomous Corporations of the overall public sector, which can contribute in various ways to combating crime and to international cooperation.
3. The subjects referred to in paragraphs 1 and 2 shall be required to fulfil the requests according to the modalities indicated by the NCB, in particular with regard to compliance with the time-limits indicated in Article 5 of Decree-Law no. 21/2014. The NCB shall conclude specific protocols with the subjects indicated in paragraph 1, letter c), and possibly with the subjects referred to in paragraphs 1, letters a) and b), and 2. In particular, these protocols shall regulate the modalities and limitations of collaboration, as well as the forms and terms of access, also through electronic means, to data and information held by the above-mentioned subjects, and the ways in which information research activities on behalf of the NCB are carried out.

Art. 4

(Provisions on the treatment of data and information managed by the NCB)

1. The NCB shall exchange data and information with ICPO-Interpol General Secretariat and with national central bureaus of foreign States in conformity with Resolution AG-2011-RES-07 adopted by ICPO Interpol and regulating data treatment, as well as in compliance with any future amendments to said Resolution.
2. Police Corps, the Judicial Authority and other San Marino Public Administrations or Bodies shall access and use police data and information, as well as the databases of ICPO-Interpol's system, according to the forms, modalities and limitations established in the Government Regulation adopted upon proposal of the NCB.
3. Data and information contained in ICPO-Interpol's system, made accessible by the NCB to the subjects indicated in paragraph 2, shall be treated and used by the latter only for the purposes indicated in the request for access and for which access has been authorised. The NCB shall also have the power to ask any subject authorised to access data contained in ICPO-Interpol's system for clarifications and indications on the treatment and use of such data.
4. The Regulation referred to in paragraph 2 also establishes the terms for the fulfilment of obligations by the NCB to provide information to ICPO-Interpol General Secretariat, the modalities for the correction, either ex officio or upon request of the interested party, of data and information treated by the NCB that are obsolete and/or incorrect and/or not relevant, as well as any provisions enforcing the rules contained in Resolution AG-2011-RES-07 adopted by ICPO-Interpol.

Art. 5

(Access to data and impossibility of opposing secrecy to the NCB in the exercise of its functions as ARO)

1. The Police Authority delegated by the NCB under Article 2, paragraph 1, letter a), shall have the power to access, upon written reasoned request as regards the performance of the function

as ARO, also through electronic means, to the integral versions, without any limitations, of available data and information contained in registers and archives kept by Public Administrations, Professional Associations, the CBSM, Police Forces and, upon authorisation of the Judge in case of data and information concerning jurisdictional activities, by the Court. The aforesaid access to data and information kept by the FIA shall be possible in the context of activities carried out by the NCB with a view to identifying, preventing or investigating money laundering offences, predicate offences, organised crime and terrorist financing.

2. The delegated Police Authority shall also have access to all information held by the Trust Register Office, in the same way as the subjects identified in Article 2, paragraph 4 of Delegated Decree no. 50 of 16 March 2010, and, in the performance of its tasks, shall directly request the trustee to produce the Book of Events referred to in Article 28, paragraph 5 of Law no. 42 of 1 March 2010.

3. Without prejudice to paragraph 4, bank secrecy referred to in Article 36 of Law no. 165 of 17 November 2005 and subsequent amendments, as well as, in general, official secrecy and professional secrecy, shall not be opposed to the NCB in the performance of its function as ARO.

4. However, those enrolled in the Register of Lawyers and Notaries Public and those enrolled in the Register of Accountants (holding a university degree or a high school certificate) may oppose professional secrecy in relation to information they receive while performing their task of defending or representing their client during judicial proceedings or in connection with such proceedings, including advice on initiating or avoiding proceedings, where such information is received or obtained before, during or after said proceedings.

5. The provisions of Law no. 70 of 23 May 1995 shall not apply to exchange of information activities between the NCB and asset recovery offices of other States in relation to cooperation in tracing and identifying proceeds of crime and other crime-related property, without prejudice to the provisions on data confidentiality contained in international agreements.

Art. 6 *(Sanctions)*

1. Anyone hindering the activities of the NCB or of the delegated subject or Police Authority in the performance of the function as ARO, or not fulfilling the requests according to the modalities indicated, or fulfilling them only partially, shall be punished, without prejudice to other sanctions prescribed by the laws in force, with an administrative pecuniary sanction ranging from € 1,000.00 to € 50,000.00, to be imposed by the NCB directly or through other offices or Police Authority under the protocols referred to in Article 3, paragraph 3.

2. The sanction referred to in paragraph 1 shall not apply to Organisational Units and Departments of the Public Administration, the Bodies of the overall public sector, supervisory authorities and Police Forces, without prejudice to other sanctions envisaged by the legislation in force.

3. The administrative pecuniary sanction set forth in paragraph 1 shall be doubled when the illicit conduct occurs through recourse to fraudulent means.

4. The option of terminating the sanction through voluntary settlement shall be exercised by paying an amount equivalent to half the sanction applied, except for the case envisaged in paragraph 3 where this option cannot be exercised.

5. An appeal against the sanction may be lodged before the Administrative Judge in the manner and according to the terms referred to in Title II of Law no. 68 of 28 June 1989 and subsequent amendments.

6. After the expiry of the payment deadline, the NCB shall resort to the compulsory collection procedure under Law no. 70 of 25 May 2004 and subsequent amendments to collect the amounts.

Art. 7
(Official secrecy)

1. The staff of the NCB and all those who in any capacity cooperate with them are bound by official secrecy and confidentiality on any matters regarding the activity of the NCB and its relations with third parties.
2. All information, records and data held by the NCB in the framework of its activities are covered by official secrecy. The obligation to abide by official secrecy shall not lapse after the end of the working relationship with the NCB.
3. Those who, willingly or unwillingly, acquire information regarding the activity of the NCB as a result of any relationship established with it, shall also be bound by official secrecy.
4. Official secrecy shall not be opposed to the Judicial Authority when the information requested is necessary in the framework of investigations into criminally punishable violations.

Art. 8
(Reference Ministries)

1. The NCB shall be responsible to the Minister of Foreign Affairs and the Minister of Internal Affairs in relation to the good functioning of the service.
2. The NCB shall also report back to the Minister of Justice and the Parliamentary Commission for Justice on the activities carried out in the performance of its function as ARO by submitting at least annual reports.

Art. 9
(Director)

1. The NCB is headed by a Director appointed by the Government on the basis of a private law 5-year contract, renewable every 5 years by express decision.
2. The requirements, incompatibilities and special provisions relative to said position shall be regulated by the law.

Art. 10
(Staff)

1. The staff of the NCB shall be recruited, as a priority, from the Police Corps or the overall public sector and shall meet the professional and experience requirements necessary to perform specific functions or tasks.
2. In order to guarantee the same treatment, and also by way of derogation from the legislation in force for the Corps of origin, police officers assigned to the NCB shall be applied, in relation to on-call service, the legal and economic regime envisaged for the Corps of the Gendarmerie.
3. In the alternative, if the staff cannot be recruited in conformity with paragraph 1, the Government shall order, to support and strengthen the functions assigned to the NCB and pending the definition of the staffing needs, the recruitment of specific staff through the procedure envisaged in Article 4, paragraph 1, letter c) of Law no. 108 of 19 September 1990.
4. The staffing needs of the NCB shall be periodically established by the Government upon reasoned proposal of the Director of the Bureau.

5. In the performance of the specific functions of the NCB, its entire staff shall be hierarchically responsible to the Director of the Bureau, also from a disciplinary point of view, and shall be required to comply with his legitimate instructions.

Done at Our Residence, this 11 June 2014/1713 since the Foundation of the Republic

THE CAPTAINS REGENT
Valeria Ciavatta – Luca Beccari

THE MINISTER OF
INTERNAL AFFAIRS
Gian Carlo Venturini