

# Government Emergency Ordinance No. 103 of 13 December 2006

## on the measures for facilitating the international police cooperation

The Government of Romania adopts the Emergency Ordinance hereby

### CHAPTER I

#### GENERAL PROVISIONS

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##### **Art. 1**

(1) The purpose of this Government Emergency Ordinance is to develop the legislative and institutional internal framework regarding the international police cooperation and it is applicable to the specific cooperation activities and international police assistance, according to national legislation, agreements or international treaties which Romania is part of it and to the relevant EU's legal instruments.

(2) The Government Emergency Ordinance hereby does not affect the provisions of Law 302/2004 on international judicial cooperation in criminal matters as amended and updated, and the relevant norms of international and European law in the field of judicial cooperation.

##### **Art. 2**

For the purpose of this Government Emergency Ordinance the following terms and phrases are thus defined:

- a) competent authority – the Romanian or foreign authority which carries out specific cooperation activities and international police assistance;
- b) requesting authority – the authority that submits an assistance request in the fields regulated by this Government Emergency Ordinance hereby;
- c) requested authority – the authority to which an assistance request in the fields regulated by the Ordinance hereby is sent;

- d) police assistance request – the request for operative data and information or the request which corresponds to the police cooperation purpose as it results from the international treaties and relevant EU’s legal instruments;
- e) operative data and information for police interest – hereinafter referred to as operative data and information, represent any information, documents, records, reports or activities, irrespective of the support, shape, language or way of communication, which are destined for the use of the competent authorities for preventing and combatting crime.
- f) agents – the personnel within the Romanian competent authorities and similar foreign authorities from Schengen states, designated to accomplish transborder pursuit activities;
- g) operative data and information exchange – represents the effective information transfer from the requested authority to the requesting authority according to the conditions stipulated/agreed between the respective authorities and to the legal provisions applicable in this matter;
- h) Schengen member states – state Parties to the Convention, signed on 19 June 1990 in Schengen, for implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders;

### **Art. 3**

The international police cooperation takes action according to the following principles:

- a) the principle of reciprocity – the operative data and information exchange is made under mutual conditions;
- b) the principle of legality - the operative data and information exchange is made upon the request of the competent authorities, according to the provisions of the law;
- c) the principle of judicial cooperation predominance – the legal provisions on international judicial cooperation in criminal matters prevails over the provisions of the present government emergency ordinance regarding the police cooperation activities carried out in the course of prosecution trial;
- d) the principle of confidentiality – the Romanian competent authorities have the obligation to ensure, as possible, upon the request of the requesting authorities, the

- confidentiality of the assistance requests issued in accordance with the provisions of this present Government Emergency Ordinance and the documents attached to them. When the condition of keeping the confidentiality cannot be ensured, the Romanian competent authority notifies the requesting authority, which decides on transmitting the assistance request;
- e) the principle of specialty – the Romanian competent authorities shall make use of the data and information received from the requested authorities only for solving the assistance request.

## CHAPTER II

### THE ORGANIZATION AND ATTRIBUTIONS OF THE INTERNATIONAL POLICE COOPERATION CENTER

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#### **Art. 4**

The International Police Cooperation Center, hereinafter referred to as IPCC, a subordinated body within the Ministry of the Administration and Interior, without legal personality, shall be designated as the central transmitting authority for the specific activities on international police assistance and cooperation provided for under Art.1 paragraph (1).

#### **Art. 5**

In accordance with the provisions of this law, the Interpol National Central Bureau, National Focal Point and other units function within IPCC.

#### **Art. 6**

(1) IPCC has the following main attributes:

a) to receive and forward the assistance requests in order to:

1. organize and ensure the operative data and information exchange between the Romanian competent authorities and similar foreign authorities as well as with the international organisations or institutions;

2. ensure the operational police cooperation on data and information exchange in accordance with the confidentiality and personal data protection rules as well as with the provisions of the law;

3. inform the Romanian competent and foreign authorities on offences related to drug trafficking, money forgery and other Romanian or foreign value bonds, stolen vehicles and objects of art, the activity of the Romanian or foreign perpetrators wanted at international level, the content of the foreign identity cards in order to prevent illegal entry/exit of some individuals as well as any other actions provided for under the Criminal Law in order to take the operative measures for preventing and combatting transborder crime.

4. other forms of police assistance and cooperation which result from the treaties Romania is part of or from EU's legal instruments;

b) to improve the international cooperation in fighting against crimes and the continuous activity in the field of operative data and information exchange of the internal affairs attaché and Romanian liaison officers accredited abroad;

c) to coordinate the data and information exchange between the Romanian and foreign competent authorities in order to carry out specific joint activities that require operations in several states;

d) to support the Romanian liaison officers' activity accredited to SECI Center;

e) to ensure the experience exchange with similar foreign structures.

(2) In performing its specific activities, IPCC has created its own data base, which implements, stores and processes the assistance requests, according to the provisions of the law.

## CHAPTER III

### SPECIFIC PROCEDURES

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#### **Art. 7**

(1) The operative data and information exchange shall be performed between the Romanian competent or foreign authorities, through IPCC, upon an assistance request.

(2) The Romanian competent authorities may forward to the foreign authorities, without a preliminary assistance request, operative data and information in order to prevent, discover and combat crimes.

#### **Art. 8**

The assistance request shall be written and have the following elements:

- a) the competent authority that issues the assistance request (the requested authority) and the recipient of the assistance request (the requesting authority)
- b) the date and the registration number of the request;
- c) the object and the purpose of the assistance request as well as the way of processing the information;
- d) if known, the data of the persons involved, mentioned according to their national or international identity cards,
- e) the emergency character and the classified level;
- f) the description of the committed offences, their legal classification, according to current legislation, and/or the presentation of the criminal actions which are believed to be premeditated or committed;
- g) the name and contact details of the officer that handles the case;

#### **Art. 9**

(1) IPCC takes the necessary steps in order to solve the assistance request only if the request meets all the elements mentioned under Art.8. When the request does not have these elements, it shall be returned to the requesting authority for completion.

(2) For emergency situation, verbal request may be forwarded, in accordance with the provisions under paragraph (1), followed by a written confirmation from the requesting authority no later than 24h.

(3) The way of forwarding the assistance requests must be in accordance with the legal provisions on the protection of classified data as well as on those concerning the processing of personal data.

(4) In special situations that require a fast data and information exchange or keeping the confidentiality of the carried out activities, the assistance request may be directly forwarded to the Romanian or foreign competent authorities, according to the case, the Romanian competent authority will inform IPCC within 24h about the reception, respective the transmission of the assistance request.

#### **Art. 10**

(1) IPCC sends the assistance request issued by the foreign competent law authorities to Romanian competent authority, according to its object.

(2) In case an authority receives an assistance request and cannot solve it, the request will immediately be forward to the Romanian competent authorities in order to solve it, while informing IPCC about this.

(3) The obligation of the Romanian authorities to solve the assistance request shall be applicable from the moment of receiving it.

#### **Art. 11**

IPCC sends as soon as possible the assistance request issued by the Romanian competent authorities to the corresponding foreign authorities or, if necessary, to Romanian internal affairs attachés or Romanian liaison officers accredited abroad or foreign liaison officers accredited in Romania.

#### **Art. 12**

The written information received by the Romanian competent authorities on international police cooperation cannot be used as evidence in the prosecution trial only with the written approval of the judicial competent authority from the state that provided the respective information.

## CHAPTER 4

### COOPERATION PERFORMED THROUGH INTERNAL AFFAIRS ATTACHÉS AND LIAISON OFFICERS

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#### **Art. 13**

(1) Romania may conclude treaties in order to send on mission the internal affairs attachés and liaison officers, for a fixed period of time.

(2) The purpose of sending on mission the internal affairs attachés and liaison officers is to promote and accelerate the cooperation between Romania and other states, especially by giving assistance:

- to ensure the data and information exchange for preventing and combating criminality;
- to solve the judicial and police assistance requests in criminal matters;
- referring to the prerogatives of the authorities responsible for the surveillance of the external border.

(3) Internal affairs attachés and liaison officers are responsible for providing assistance and cannot take any action in order to prevent and combat criminality. They provide data and information and perform their prerogatives according to the instructions established by the Romanian competent authorities.

#### **Art. 14**

(1) The Romanian internal affairs attachés and liaison officers performing their activities in a third state or in an international organization shall forward to IPCC the data and information obtained in the developed activity, referring to serious threats against another UE member state, which has no internal affairs attaché or liaison officer accredited in that third state or in that international organization.

(2) IPCC forwards to the interested member state data and information provided for under paragraph (1), only with the approval of the Romanian competent authorities in order to decide the opportunity of sending these data and information.

(3) When the UE member state is represented by an internal affairs attaché or a liaison officer accredited in a third state or within an international organisation where Romania is represented

too, the internal affairs attaché or Romanian liaison officer shall directly inform the internal affairs attaché or liaison officer about serious threats against the respective UE member state.

(4) IPCC may receive assistance requests on information exchange from an UE member state, having no representative in that third state or international organisation, where Romania has its own internal affairs attaché or liaison officer. IPCC checks if the request does not infringe the Romanian legislation, and informs, as soon as possible, the requesting member state if its request may be solved and if needed, IPCC will send it to the internal affairs attaché or Romanian liaison officer.

(5) The provisions under paragraph (4) apply accordingly also in relation with Europol.

#### **Art. 15**

Annually, the Ministry of Administration and Interior sends to the General Secretariat of the Council of the European Union and its member states information referring to:

- a) sending on mission the internal affairs attachés and liaison officers representing Romania in third states or within the international organisations, accredited under the national legislation or based on the international obligations, assumed by the treaties Romania is part of.
- b) treaties signed by Romania with the UE member states in respect of sending on mission the internal affairs attachés and liaison officers.

#### **Art. 16**

Bilateral and multilateral treaties may establish that Romanian internal affairs attachés and liaison officers from a third state or within an international organisation, are able to assure the representation of one or more UE member states in that third state or in that international organisation.

### CHAPTER 5

#### HOT PURSUIT

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#### **Art. 17**

(1) The hot pursuit consists in a set of operative measures taken on the territory of several states, with the purpose of catching a person who has been caught in the act of committing the offence or who participated in such an offence, or any person who managed to escape from provisional custody or while serving a sentence involving deprivation of liberty.

(2) The hot pursuit may be performed by the agents of the competent authority of a Schengen member state on the Romanian territory, if the Romanian competent authorities have been informed by direct means of communication about the entry to the Romanian territory.

(3) The Romanian competent authorities mentioned under paragraph (2) are the Romanian Police and the Romanian Border Police.

(4) Upon the competent Romanian authorities' request, the hot pursuit shall immediately be ceased.

#### **Art. 18**

(1) The competent authorities of a Schengen member state which are pursuing in their country a person who is in one of the situations stipulated under Art.17, paragraph (1) may continue the pursuit on the Romanian territory, without previously informing the Romanian competent authority, if the following conditions are cumulative fulfilled:

a) given the particular emergency of the situation, the Romanian competent authorities could not be previously informed, by direct means of communication, about their entry to the Romanian territory, or where the Romanian competent authorities were unable to reach the scene place in due time in order to take over the pursuit.

b) the hot pursuit may take place only for one of the following offences:

1. manslaughter, murder, first degree murder, aggravated murder
2. offences regarding the sexual life;
3. destruction committed through arson, explosion or any other such means;
4. forgery of money or other assets;
5. first degree theft and robbery, concealment and support of the perpetrator;
6. blackmail;
7. illegally deprivation of freedom;
8. trafficking in human beings and other related offences;
9. trafficking in drugs or precursors;

10. breach of the laws on arms and explosives, nuclear materials and other radioactive materials;
11. infringement of the disposals regarding the import and/or export of waste and residuals;
12. leaving the site of an accident without approval from the police who are performing on-site investigation, by the driver of any vehicle that has been involved in an accident which has resulted in death or injury to the corporal integrity or health of one or several persons;

(2) The pursuing agents shall, no later than crossing the state border, contact the Romanian Border Police or the Romanian territorial competent authority which may request the immediate cessation of pursuit.

#### **Art. 19**

- 1) Upon the request of the pursuing agents, the Romanian competent authorities shall take all the necessary measures in order to establish the identity of the pursued person or to order the arrest or preventive detention of the pursuer, under the conditions set forth by the law.
- 2) In case of the arrested person mentioned under paragraph (1) the arrest measure cannot exceed 6 hours, unless the Romanian competent authorities have previously received a request for that person's preventive detention with a view to extradition, in any form whatsoever. The period of six hours shall be calculated without including the hours between midnight and 9.00 a.m.

#### **Art. 20**

- (1) The hot pursuit may be carried out only in accordance with the following general conditions:
  - a) the pursuing agents must comply with the Romanian legislation and they must obey the instructions issued by the competent Romanian authorities;
  - b) the pursuit shall be carried out over land borders;
  - c) the entry of the agents into private homes and places as well as into places not accessible to the public shall be prohibited;

d) the pursuing agents shall be easily identified, either by their uniform, by wearing a visible inscription on their clothes or by the accessories fitted to their vehicles. The use of civilian clothes combined with the use of unmarked vehicles without the aforementioned identification means is prohibited. The agents shall permanently be able to justify their official character;

e) the pursuing agents may carry their service weapons; their use shall be prohibited, excepting the cases of legitimate self-defense;

f) after each operation referred to under Art.17, the pursuing agents shall personally inform on their mission the Romanian competent authority. Upon the request of the Romanian competent authority, the agents shall remain at its disposal until the circumstances surrounding their action have sufficiently been clarified; this condition shall apply even if the pursuit has not resulted in the arrest or the preventive detention of the pursued person;

g) upon a request of the Romanian competent authority, the authority of the State the pursuing agents belong to may assist the enquiry subsequent to the operation they took part to, including the judicial proceedings;

(2) If the bilateral agreements concluded according to Art.24 paragraph (1) provide that the pursuing foreign agents may apprehend the pursued person, in order to bring he/she before the Romanian competent authorities, the person may be subject to a bodily search; handcuffs may be used during the transfer. The objects carried out by the pursued person may be seized, according to the law.

## **Art. 21**

In respect to the responsibility of the transborder pursuing foreign agents, the provisions provided for under Art.187<sup>10</sup> under Law 302/2004, as amended and supplemented, shall accordingly be applied.

## CHAPTER 6

### SPECIAL DISPOSALS ON COOPERATION WITH UE MEMBER STATES

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## **Art. 22**

The Romanian competent authorities shall grant assistance to other foreign competent authorities from the EU member states and ensure permanent and strength cooperation in order to efficiently control, guard and supervize the state border, especially by exchanging all relevant information, excepting the personal data, unless the Convention, signed on 19 June 1990 in Schengen, for implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders provides otherwise, by approximating, if possible, the instructions given to the authorities responsible with the state border control and by promoting professional training and reevaluating the personnel in charge with the state border control. This cooperation may be accomplished by sending on mission several liaison officers.

### **Art. 23**

(1) The Romanian competent authorities, in accordance with the provisions of the present Government Emergency Ordinance and within the limits of their competence, shall grant police assistance to the foreign competent authorities from the UE member states in order to prevent and combat crimes, excepting the cases that require an international judicial assistance request.

(2) If the requested Romanian authority does not have the competence to solve the assistance request, it shall forward it to the competent authorities.

(3) At the border areas, the police cooperation shall be regulated by treaties concluded between the Romanian competent authorities and the competent authorities of the neighboring EU member states.

## CHAPTER 7

### FINAL PROVISIONS

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### **Art. 24**

(1) In order to apply the provisions concerning the hot pursuit, the bilateral agreements shall provide the following:

a) regarding the activity of the agents:

(i) hot pursuing agents have no right to stop or detain the pursued person;

(ii) the hot pursuing agents may stop the pursued person until the intervention of the Romanian competent authorities;

b) regarding the areas the agents may act in:

(i) the agents may act in a defined territory or within a limited period of time;

(ii) the agents may act in the whole territory of Romania and without any time restrictions;

(2) The bilateral agreements concluded according to paragraph (1), based on reciprocity, may establish that the offences, for which the hot pursuit may be carried out, provided for under Art.18 paragraph (1) letter (b), to be replaced with the offences upon which the extradition may be requested.

#### **Art. 25**

In order for this Government Emergency Ordinance to be enforceable, the Ministry of Administration and Interior shall elaborate methodological norms, which will be approved by Governmental Decision.

#### **Art. 26**

This Government Emergency Ordinance shall enter into force on the date of Romania's accession to the European Union, excepting Chapter 5, which shall enter into force on the date of ratification by Romania of the Convention, signed on 19 June 1990 in Schengen, for implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders.

#### **Art. 27**

On the date of the Romania's accession to the European Union, Art.187<sup>^</sup>9 under Law No.302/2004 on international judicial cooperation in criminal matters, published in the Official Gazette of Romania, Part I, No. 494 of the 1<sup>st</sup> July 2004, as amended and updated, shall be repealed.

\* This Emergency Ordinance establishes the mandatory conditions of the direct applicability of Art.7, 39, 41, 46 and 47 under the Convention, signed on 19 June 1990 in Schengen, for implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders.

**Bucharest, 13 December 2006**