

Emergency Ordinance No. 93/2012 on the establishment, organization and operation of the Financial Supervisory Authority

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@Text updated on 29.06.2013. The ordinance comprises the amendments in the following:

- GEO No. 12/2013 published in the Official Journal, Part. I, No. 127 of 08/03/2013.
- Law No. 113/2013 published in the Official Journal, Part. I, No. 234 of 23/04/2013.
- GEO No. 55/2013 published in the Official Journal, Part. I, No. 331 of 06/06/2013.
- Rectification published in the Official Journal, Part. I, No. 349 of 13/06/2013.
- GEO No. 78/2013 published in the Official Journal, Part. I, No. 391 of 29/06/2013.

Given the discrepancies found in particular recently in the capital market and insurance sector, legislative measures must be adopted that ensure an efficient sectorial supervision outside the scope of the central bank.

Taking such measures as a matter of urgency is required because in the current context in which the tensions generated by the economic crisis continue, such discrepancies risk undermining, by contamination, the population's trust in the services offered by the entire financial system and in the manner in which such services are supervised.

Whereas the matters at issue are of exceptional nature, and their regulation may not be postponed,

pursuant to Art. 115 Para (4) of the Constitution of Romania, republished,

the Government of Romania hereby adopts this emergency ordinance.

CHAPTER I

General provisions

Art. 1. - (1) This emergency ordinance regulates the establishment, objectives, duties, organization and operation of the Financial Supervisory Authority .

(2) The Financial Supervisory Authority, hereinafter referred to as ASF, shall be established as an autonomous specialized administrative authority, holding legal personality, independent, self-financed, which exercises its duties according to the provisions hereof, by taking over and reorganizing all the duties and prerogatives of the National Securities Commission (NSC), the Insurance Supervisory Commission (ISC) and the Private Pension System Supervisory Commission (PPSSC).

(3) The ASF activities shall not be restricted by any other authority in exercising the duties of the ASF set out herein.

(4) The ASF's main headquarters shall be located in Bucharest. The ASF may establish secondary headquarters and representative offices if required.

Art. 1. – was amended by item 1. of Law No. 113/2013 as of 26.04.2013.

Art. 2. - (1) Within the meaning hereof, the ASF exercises authorization, regulatory, supervision and control duties on:

a) financial instrument underwriters; financial investment undertakings; undertakings for collective investment; investment management undertakings; financial investment consultants; financial instrument markets; market and system operators; central depositories; clearing-settlement houses; central counterparts; market operations; security issuers; Investor Compensation Fund; other natural or legal persons carrying out activities according to Law No. 297/2004 on the capital market, as subsequently amended and supplemented, Government Emergency Ordinance No. 32/2012 on the undertakings for collective investment and the investment management companies, and for the amendment and supplementation of Law No. 297/2004 on the capital market, Government Emergency Ordinance No. 25/2002 approving the statute of the National Securities Commission, approved as amended and supplemented by Law No. 514/2002, as subsequently amended and supplemented, Law

No. 253/2004 on the final nature of settlement in the payment systems and in the financial instruments operations settlement, as subsequently amended and supplemented, Government Ordinance No. 9/2004 on certain financial security contracts, approved as amended and supplemented by Law No. 222/2004, as subsequently amended and supplemented, Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented;

b) insurance business entities, for insurance-reinsurance and reinsurance of mutual undertakings, herein after referred to as insurers, and reinsurers, and insurance intermediaries, supervision of insurers and reinsurers operating in or from Romania, supervision of the activity of insurance and reinsurance intermediaries, and other connected activities, according to Law No. 136/1995 on insurances and reinsurances in Romania, as subsequently amended and supplemented, Law No. 32/2000 on the insurance activity and supervision of insurers, as subsequently amended and supplemented, Law No. 260/2008 on compulsory home insurance against earthquakes, landslides and floods, republished, Law No. 503/2004 on the financial redress and bankruptcy of insurance companies, as subsequently amended;

c) the private pension system, according to Law No. 411/2004 on the privately managed pension funds, republished, as subsequently amended and supplemented, Government Emergency Ordinance No. 50/2005 on the establishment, organization and operation of the Private Pension System Supervisory Commission, approved as amended and supplemented by Law No. 313/2005, as subsequently amended and supplemented, Law No. 204/2006 on voluntary pensions, as subsequently amended and supplemented, Law No. 187/2011 on the establishment, organization and operation of the Private Pension System Rights Guarantee Fund, Government Emergency Ordinance No. 61/2008 on the implementation of the principle of equal treatment between men and women with regard to the access to services and products and the supply of services and products, approved as amended by Law No. 62/2009;

d) all entities, institutions, market operators and security issuers, and financial operations and instruments regulated by the secondary legislation issued prior to the entering into force hereof by the National Securities Commission, the Insurance Supervisory Commission, and the Private Pension System Supervisory Commission to support and implement the primary legislation applicable to the financial market.

(2) The ASF shall be the competent authority in Romania within the meaning of Art. 22 Para (1) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, as subsequently amended and supplemented, and has the duties and competences laid down therein, exercised in accordance with its own statute.

(3) The ASF shall be the competent authority in Romania within the meaning of Art. 11 of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation, as subsequently amended and supplemented.

(4) The ASF shall be the competent authority in Romania within the meaning of Art. 48 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.

(5) The ASF shall be the competent national authority to enforce and follow the compliance with directly applicable regulations issued by the European Union in the fields stipulated herein and to transpose and implement in the national legislation the provisions issued by the EU Council, the EU Parliament, the European Commission and other European authorities.

(6) The ASF shall be the only national authority competent to represent the interests of Romania at The International Organization for Securities Commissions - IOSCO, The European Securities and Markets Authority - ESMA, The European Insurance and Occupational Pensions Authority - EIOPA and The International Association of Insurance Supervisors - IAIS, as it is an ex-officio member of such international authorities, based on applicable international legislation.

Art. 2. – was amended by item 2. of Law No. 113/2013 as of 26.04.2013.

Art. 3. – The supervision exercised by the FSA, provided under Art. 2 Para (1), shall imply:

a) granting, suspending, withdrawing or, if applicable, refusing to grant according to law authorizations, approvals, endorsements, certificates, derogations;

b) issuing regulations published in the Official Journal of Romania, Part I;

c) exercising control over the entities and operations provided under Art. 2 Para (1) based on reports received and on site verifications;

d) ordering measures and enforcing sanctions.

(2) Under the cooperation with the European Insurance and Occupational Pensions Authority (EIOPA), the ASF has the following obligations:

a) to ensure the fulfilment of the obligations devolving upon it as competent authority according to Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC;

b) to communicate to the EIOPA all the necessary information on the member states where the entities in its field of authorization, regulation and supervision operate;

c) to immediately inform the EIOPA when a prior operation authorization is granted to an entity, in the case of a cross-border activity;

d) to immediately inform the EIOPA on the grounded decision to prohibit the activities of an entity, adopted within its area of competence;

e) to report to the EIOPA prudential national provisions relevant to the field of private pensions, which are not included in the labour and social protection legislation, and to ensure the updating of such information at least every 2 years;

f) to inform the EIOPA and the European Commission of any major difficulty in exercising its activity, regulated by national rules harmonized with EU law.

Paragraph (2) was inserted by item 1. of Emergency Ordinance No. 78/2013 as of 29.06.2013.

Art. 4. – The ASF, management members and personnel shall not request or accept instructions of any kind from any institution, body or authority in exercising their duties conferred by law.

Art. 4. – was amended by item 3. of Law No. 113/2013 as of 26.04.2013.

CHAPTER II

Objectives, duties and prerogatives

Art. 5. – In exercising the duties and prerogatives provided hereby, the ASF shall contribute to the consolidation of an integrated framework of operation and supervision of markets, participants and operations on such markets, having as objectives:

a) to ensure the stability, competitiveness and proper functioning of financial markets, to promote trust in these markets and in investments in financial instruments, and to ensure the protection of operators and investors against unfair, abusive and fraudulent practices;

b) to promote the stability of the insurance activity and to defend policyholders' rights;

c) to ensure the efficient operation of the private pension system and to protect the interests of participants and beneficiaries.

Art. 6. - (1) The duties and prerogatives conferred to the ASF, including the conditions to exercise them, and the sanctions enforceable by the ASF, shall be provided by the regulations stipulated under Art. 2 Para (1).

Paragraph (1) was amended by item 4. of Law No. 113/2013 as of 26.04.2013.

(2) The ASF's regulatory acts may take the form of regulations, rules and instructions.

(3) The ASF's individual acts shall mean authorizations, endorsements and decisions.

Art. 7. - (1) Any natural or legal person shall be entitled to address the competent courts of law should they consider themselves prejudiced by the improper application or non-application by the ASF of the provisions hereof.

(2) The ASF shall be the only authority competent to issue opinions on matters of adequacy, on qualitative assessments and analyses underlying the issuance of its acts.

Art. 7. - was amended by item 5. of Law No. 113/2013 as of 26.04.2013.

CHAPTER III

Management, organization and operation of the ASF

Art. 8. - (1) The ASF shall be managed by a Board formed of 11 members, of which one president, one first vice president and 3 vice presidents, who shall be executive members. Each of the 3 vice presidents shall have specific duties corresponding to one of the 3 sectors of financial supervision. The Resolution of the Parliament of Romania for the appointment thereof shall lay down the financial supervision sector to which they are designated. The other 6 members shall be non-executive members.

Paragraph (1) was amended by item 1. of Emergency Ordinance No. 55/2013 as of 06.06.2013.

(2) The members of ASF Board shall be appointed by the Parliament, in the joint meeting of the two Chambers, at the joint proposal of the Budget, Finance, Banking Activity and Capital Market Committee and the Economic, Industry and Services Committee in the Senate and the Budget, Finance and Banks Committee and the Economic Policy, Reform and Privatization Committee in the Chamber of Deputies.

(3) The joint committees provided under Para (2) shall select the candidates to be appointed members of the ASF Board, only based on their professional experience of minimum 10 years in the financial, credit institutions and/or non-banking financial institutions sector.

Paragraph (3) was amended by item 1. of Emergency Ordinance No. 55/2013 as of 06.06.2013.

(4) Members of the ASF Board shall be appointed for a 5-year term, with possibility of renewal, according to the provisions of Paras (2) and (3) and Art. 9.

(5) The appointment of the members of the ASF Board, employed under the number provided under Para (1), shall be made by Parliament, in accordance with this emergency ordinance, until 30 June 2013.

Paragraph (5) was inserted by item 2. of Emergency Ordinance No. 55/2013 as of 06.06.2013.

Art. 9. – The members of the ASF Board shall fulfil the following conditions:

a) to be Romanian citizens domiciled in Romania, to have good reputation and professional training, and to have professional experience in the areas of competence of the ASF;

a1) to hold long-term higher education degrees;

Letter a1) was inserted by item 8. of Law No. 113/2013 as of 26.04.2013.

b) not to be senators, deputies or members of any political party or political organization throughout their mandate;

Letter b) was amended by item 9. of Law No. 113/2013 as of 26.04.2013.

c) not to exercise another profession or fill a public or private position, except the possibility of conducting didactic or scientific research activities, avoiding conflict of interest;

Letter c) was amended by item 9. of Law No. 113/2013 as of 26.04.2013.

d) not to be members of the boards of administration, supervisory boards, directorates or censor committees, not to fill positions of managers or otherwise and not to render services to/for the following entities:

1. entities focusing on the activity of financial instrument intermediaries and undertakings for collective investment;
2. investment management undertakings;
3. entities focusing on the activity of insurers, reinsurers, insurance and reinsurance intermediaries and other related activities;
4. entities focusing on the private pension system, according to Law No. 411/2004, republished, as subsequently amended and supplemented;
5. financial investment undertakings;

Letter d) was amended by item 9. of Law No. 113/2013 as of 26.04.2013.

d1) not to hold, either they and/or their family members up to the third degree inclusively, directly or indirectly, more than 5% of the capital of the entities provided under letter d) or of the voting rights or a

participation enabling significant influence over the decisions made in the general assembly or the board of administration of such entities;

Letter d1) was inserted by item 10. of Law No. 113/2013 as of 26.04.2013.

e) not to have been part of the management of a business entity that has ceased its activity under any form, without observing its obligations towards third parties or that has been declared bankrupt based on the results from the period when the individual has exercised their mandate and for which they are liable;

f) to have a clean criminal and fiscal record;

g) not to be spouses, relatives or affines up the third degree with the President of Romania, the presidents of the Chambers of Parliament, members of the Government or of the Board of Administration of the National Bank of Romania.

Letter g) was amended by item 3. of Emergency Ordinance No. 55/2013 as of 06.06.2013.

The paragraph was amended by the line of the Rectification of 13/06/2013 as of 13.06.2013.

Art. 10. - (1) A member of the ASF Board shall be revoked according to the procedure provided under Art. 8 Para (2), when said member no longer fulfils the conditions stipulated under Art. 9.

Paragraph (1) was amended by item 12. of Law No. 113/2013 as of 26.04.2013.

(2) No member of the ASF Board may be revoked for other reasons or through a procedure other than that provided under Para (1).

Art. 11. – In case a Board member faces permanent impossibility to exercise the mandate, or if a member resigns, upon notification to the ASF, the Parliamentary committees provided under Art. 8 Para (2) shall propose to Parliament, within 30 days, to appoint another person. Permanent impossibility to exercise the mandate shall mean any circumstance causing unavailability for more than 90 consecutive days.

Art. 12. - (1) The capacity of member of the ASF Board shall cease as follows:

a) upon expiry of the term for which the person was appointed, according to Para (2);

b) by resignation;

c) by revocation by Parliament according to Art. 10;

d) by replacement, according to Art. 11;

e) by death.

(2) The members of the FSA Board whose mandates have expired shall remain in office until their successors are appointed.

(3) In the cases provided under Para (1) letters b)-d), a new person shall be appointed for the remainder of the mandate.

(4) FSA members shall have 30 days from appointment to eliminate any incompatibilities arising from Art. 9.

(5) The members of the FSA Board shall notify the FSA and Parliament immediately in writing of the occurrence of any of the incompatibilities provided under Art. 9. Until the Parliament issues the decision to appoint another person, the mandate of the Board member shall be suspended as of right.

Art. 13. - (1) The president shall represent the FSA as autonomous administrative authority, as public law legal person engaged in civil law relationship and as credit authorizing entity.

(2) In case of temporary impossibility to exercise the president's prerogatives, the FSA shall be represented by the first vice president.

Art. 13. – was amended by item 13. of Law No. 113/2013 as of 26.04.2013.

Art. 14. - (1) The FSA Board is convened by the president and/or first vice president anytime required or at the request of at least 9 members.

Paragraph (1) was amended by item 14. of Law No. 113/2013 as of 26.04.2013.

(2) The FSA Board shall validly deliberate in the presence of at least half plus one of its members, including the president, or in the absence thereof, the first vice president.

Paragraph (2) was amended by item 14. of Law No. 113/2013 as of 26.04.2013.

(3) Resolutions shall be adopted by the vote of 2/3 of the members present.

Paragraph (3) was amended by item 14. of Law No. 113/2013 as of 26.04.2013.

(4) The resolution adopted is mandatory for all FSA Board members, and the separate opinion of members who voted against or abstained is recorded in the minutes of the meeting.

(5) The members of the FSA Board shall exercise their mandate according to law. They shall be jointly liable for their activity, except if they voted against a resolution or they abstained from voting it and recorded their separate opinion in the minutes of the meeting. Board members shall sign the documents arising from the resolution adopted, if such duty is incumbent according to law and the FSA internal regulations, even if they voted against or abstained from voting the resolution.

Art. 15. - (1) The organizational structure, number of positions, personnel's management and execution duties, personnel's employment and selection criteria that ensure the proper running of the activity shall be established by the FSA Board.

(2) The FSA Board shall approve the organizational chart, the organization and operation regulation and shall establish in its own regulation the regime and principles of remuneration of Board members and personnel. Based on such regulation, the Board shall establish the remuneration of its members and personnel, considering the remuneration granted for similar positions and functions in the financial market.

(3) The level of remuneration of the members of the FSA Board, established according to Para (2), may not exceed the level of remuneration of the members of the Board of Directors of the National Bank of Romania.

Paragraph (3) was inserted by item 4. of Emergency Ordinance No. 55/2013 as of 06.06.2013.

Art. 15. - was amended by item 15. of Law No. 113/2013 as of 26.04.2013.

Art. 16. – The FSA shall be held liable within the limits of its patrimony.

Art. 17. - (1) On behalf of the FSA, the president of the Board shall submit to Parliament, no later than 30 June of the following year, the FSA annual report comprising the activities, annual financial statements and audit report, which shall be debated, without being submitted to vote in the joint meeting of the two Chamber of Parliament.

(2) After being submitted to Parliament, the report provided under Para (1) shall be published by the FSA in the Official Journal of Romania, Part III.

CHAPTER III was amended by item 6. of Law No. 113/2013 as of 26.04.2013.

CHAPTER IV

ASF Budget

Art. 18. - (1) The FSA is fully financed from its own extra-budgetary revenues.

(2) The ASF revenues come from the sources provided under:

a) Arts. 13 and 17 Para (3) of the Statute of the National Securities Commission, approved by Government Emergency Ordinance No. 25/2002, approved as amended and supplemented by Law No. 514/2002, as subsequently amended and supplemented;

b) Art. 10 Para (1) of Law No. 32/2000, as subsequently amended and supplemented;

c) Art. 17 Para (1) and Art. 35 of Government Emergency Ordinance No. 50/2005, approved as amended and supplemented by Law No. 313/2005, as subsequently amended and supplemented.

d) revenues from alienation of fixed assets and items of inventory from its own patrimony, which have become available.

Letter d) was inserted by item 16. of Law No. 113/2013 as of 26.04.2013.

(3) Expenditure is set out in the annual FSA budget, in accordance with the institution's objectives and duties.

Paragraph (3) was inserted by item 17. of Law No. 113/2013 as of 26.04.2013.

Art. 19. - (1) The annual income and expenditure budget shall be approved by the FSA Board and its implementation is verified according to the control and internal audit practices and procedures.

(2) The FSA shall transfer to the State budget 80% from the income and expenditure excess recorded at year end, prior to the term established for the submission of the annual financial statements.

Paragraph (2) was amended by item 5. of Emergency Ordinance No. 55/2013 as of 06.06.2013.

Art. 19. - was amended by item 18. of Law No. 113/2013 as of 26.04.2013.

Art. 20. – For capitalization purposes, the cash of the FSA may be invested, under arm’s length conditions and avoiding conflict of interest, in interest bearing instruments with credit institutions, in government securities or securities of the local public administration, and in other low-risk instruments.

Art. 21. – The FSA may purchase, lease or own or use real estate required for the conduct of its activity from the financing sources provided under Art. 18 Para (2).

CHAPTER V

Transitory and final provisions

Art. 22. - (1) The FSA shall take over from the National Securities Commission, the Insurance Supervisory Commission and the Private Pension System Supervisory Commission, based on delivery-reception protocols concluded with each of them, within 15 days from the appointment of the members of the FSA Board, but no later than 30 April 2013, the cash existing in the accounts and the patrimony determined based on the financial statements prepared according to Art. 28 Para (1) of Accounting Law No. 82/1991, republished, as subsequently amended and supplemented, and the other rights and obligations arising therefrom.

Paragraph (1) was amended by item 19. of Law No. 113/2013 as of 26.04.2013.

(2) The protocols provided under Para (1) shall enter into force upon the execution date of the last protocol.

Art. 23. – The FSA shall take over the number of positions and the personnel of the National Securities Commission, the Insurance Supervisory Commission and the Private Pension System Supervisory Commission, preserving all of the rights existing as at the takeover date, salary rights inclusively.

Art. 24. - (1) The FSA shall exercise the prerogative provided under Art. 2 Para (1) starting from the conclusion date of the delivery-reception protocol provided under Art. 22 Para (1), but no later than 30 April 2013. On the same date, the National Securities Commission, the Insurance Supervisory Commission and the Private Pension System Supervisory Commission shall cease to operate and the mandates of the members of such authorities and the members of management shall cease as of right.

(2) Until the execution date of the delivery-reception protocol in accordance with Para (1), the National Securities Commission, the Insurance Supervisory Commission and the Private Pension System Supervisory Commission shall continue their activity according to the legislation in force.

Art. 24. - was amended by item 20. of Law No. 113/2013 as of 26.04.2013.

Art. 25. - (1) The FSA shall substitute itself in all of the rights and obligations arising from all regulations, contracts, conventions, arrangements, protocols, memoranda, agreements and others alike, and in all disputes in the which the National Securities Commission, the Insurance Supervisory Commission and the Private Pension System Supervisory Commission are parties.

(2) The contracts, conventions, arrangements, protocols, memoranda, agreements and others alike concluded by the National Securities Commission, the Insurance Supervisory Commission and the Private Pension System Supervisory Commission, under performance upon the adoption hereof, shall maintain their validity and shall be taken over by the FSA.

(3) The Investor Compensation Fund S.A., the Policyholders' Guarantee Fund and the Private Pension System Rights Guarantee Fund shall be managed and used according to the specific destinations of each of said funds.

Paragraph (3) was inserted by item 21. of Law No. 113/2013 as of 26.04.2013.

Art. 26. – Throughout the regulations, the phrases “National Securities Commission”, “Insurance Supervisory Commission” and “Private Pension System Supervisory Commission” shall be replaced with “Financial Supervisory Authority”.

Art. 27. – The acts issued by the authorities that cease to operate under Art. 24 Para (1), including the regulations adopted thereby for the application of the law, shall remain valid.

Art. 28. – The provisions hereof shall be supplemented by the legislation regulating the activity of authorities that cease to operate, as the case may be, to the extent they do not breach the provisions hereof.

Art. 29. – The provisions of Arts. 23, 25, 26 and 28 shall be applied starting from the date provided under Art. 22 Para (1).

The paragraph was inserted by item 2. of Emergency Ordinance No. 78/2013 as of 29.06.2013.

The emergency ordinance transposes the provisions of Art. 4 of Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), published in the Official Journal of the European Union, series L, No. 331 of 15 December 2010.

The paragraph was inserted by item 2. of Emergency Ordinance No. 78/2013 as of 29.06.2013.

PRIME-MINISTER

VICTOR-VIOREL PONTA

Countersigns:

Vice prime-minister,

Minister of Public Finance,

Florin Georgescu

Minister of European Affairs,

Leonard Orban

Bucharest, 18 December 2012

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