

## ***Financial Supervisory Authority***

### **Regulation no. 25/2020 on the supervision of international sanctions implementation by the Financial Supervisory Authority and the entities regulated by it**

Effective as of January 2, 2021

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*Pursuant to the provisions of article 3 paragraph (1) section b) and article 6 paragraph (2) of the Government Emergency Ordinance no. 93/2012 on the establishment, organization and functioning of the Financial Supervisory Authority, approved with amendments and supplements by Law no. 113/2013, with subsequent amendments and supplements,*

*having regard to the provisions of:*

- Government Emergency Ordinance no. 32/2012 on undertakings for collective investment in transferable securities and investment management companies, as well as for amending and supplementing Law no. 297/2004 regarding the capital market, approved with amendments and supplements by Law no. 10/2015, with subsequent amendments and supplements;
- Law no. 126/2018 on the markets of financial instruments, with subsequent amendments and supplements;
- Law no. 74/2015 with regard to the managers of alternative investment funds, with subsequent amendments and supplements;
- Law no. 243/2019 on the regulation of alternative investment funds and for the amendment and supplement of some regulatory documents;
- Law no. 411/2004 on privately managed pension funds, republished, with subsequent amendments and supplements;
- Law no. 204/2006 on voluntary pensions, with subsequent amendments and supplements;
- Law no. 1/2020 on occupational pensions, with subsequent supplements;
- Law no. 237/2015 on the authorization and supervision of the insurance and reinsurance activity, with subsequent amendments and supplements;
- Law no. 236/2018 on the distribution of insurance, with subsequent supplements,

*based on the provisions of article 17 paragraph (6) and of article 18 paragraph (3) of the Government Emergency Ordinance no. 202/2008 on the implementation of international sanctions, approved with amendments by Law no. 217/2009, as subsequently amended and supplemented,*

*following the deliberations of the Board of the Financial Supervisory Authority during the meeting of November 11, 2020,*

The Financial Supervisory Authority issues this regulation.

## **CHAPTER I**

### **General Provisions**

Article 1. - (1) The present regulation regulates the implementation of the international sanctions, according to the provisions established by the Government Emergency Ordinance no. 202/2008 on the implementation of international sanctions, approved with amendments by Law no. 217/2009, as subsequently amended and supplemented, hereinafter referred to as G.E.O. no. 202/2008.

(2) The provisions of the present regulation apply to the entities regulated, authorized and supervised by the Financial Supervisory Authority, hereinafter referred to as F.S.A., which falls under the incidence of Law no. 129/2019 for preventing and combating money laundering and terrorism financing, as well as for amending and supplementing some regulatory documents, with subsequent amendments and supplements, hereinafter referred to as Law no. 129/2019.

Article 2. - The terms, abbreviations and expressions used in this regulation have the meanings provided in the G.E.O. no. 202/2008, Law no. 129/2019 and in the legislation specific to the financial supervision sectors.

Article 3. - F.S.A. ensures the publicity of national regulatory documents and of the rules of the European Union with direct application by which international sanctions are established, by posting on its own website, in a special space dedicated to this purpose, references and links to the websites of the issuing authorities, institutions or organizations.

Article 4. - (1) F.S.A. pursues the compliance with the rules regarding the implementation of the international sanctions by the authorized, regulated and supervised entities mentioned in article 1 paragraph (2), hereinafter referred to as regulated entities.

(2) In the process of supervision and control, the F.S.A. may request information or documents that it deems relevant from the regulated entities.

Article 5. - F.S.A. organizes its own records on the implementation of international sanctions on non-bank financial markets and transmits this information, upon request, to the National Agency for Fiscal Administration (ANAF) or to the National Office for Prevention and Control of Money Laundering (ONPCSB).

Article 6. - (1) F.S.A. appoints representatives within the interinstitutional council established under the G.E.O. no. 202/2008, which has as main objective the provision of a general framework for cooperation in the field of implementation of international sanctions in Romania.

(2) F.S.A. cooperates with other authorities and public institutions from Romania and from other states that have attributions for the implementation of international sanctions, including through the exchange of data and information transmitted under the conditions provided by the legislation in the field.

## **CHAPTER II**

### **Obligations of the regulated entities**

Article 7. - (1) In order to ensure the performance of the activity in accordance with the requirements of the G.E.O. no. 202/2008, regulated entities shall adopt internal policies, procedures and mechanisms for the implementation of international sanctions, which shall include at least the following elements:

a) the detection of the designated persons or entities and of the operations in which goods are involved, applicable to potential clients and applicants for occasional transactions;

b) the acceptance as a customer, including in the case of occasional transactions, for the designated persons or entities or for the persons or entities requesting the performance of operations in which goods are involved;

c) the detection of the designated persons or entities and of the operations in which goods are involved, applicable to the existing customers in the context of the modification and / or completion of the international sanctioning regimes;

d) the regime applicable to customers who have been identified as designated persons or entities, starting with the date on which they no longer fall under international sanctions, as well as the regime applicable to persons or entities that have requested operations in which goods are involved;

e) the modalities of drawing up and keeping the records regarding the designated persons or entities and the persons or entities that have requested the performance of operations in which goods are involved;

f) the standards for employment and the verifications performed in this respect, as well as the training programs for the personnel with attributions in the field of international sanctions and for the training and periodic evaluation of the employees;

g) the access of persons having attributions in the field to the records of the regulated entity in order to examine the operations carried out in the past with persons or entities detected as designated persons or entities;

h) the competences of the persons with responsibilities in the implementation of internal rules for the application of international sanctions, designated according to article 9;

i) the measures applicable in the field of internal control, risk assessment and management, compliance and communication management;

j) the obligations incumbent on the regulated entity from the perspective of blocking the good belonging to the designated person or entity;

k) the regime applicable to persons or entities that have requested the performance of operations in which goods are involved according to G.E.O. no. 202/2008;

l) reporting procedures, internal and applied by the F.S.A. and, respectively, by the competent authorities designated according to article 12 of the G.E.O. no. 202/2008, as well as the prompt provision of data at their request, in the format and methodology established by the authorities.

(2) The internal policies, procedures and mechanisms provided in paragraph (1) approved by the person exercising the function of compliance / internal control, according to the specific legislation, are:

a) approved at the level of the management structure and are subject to revision, whenever required;

b) known by the entire staff of the regulated entity with responsibilities in the field;

c) available for verification, at the request of the F.S.A., whenever required.

Article 8. - (1) The regulated entities have the obligation to keep all the information they have regarding the implementation method of the international sanctions' regime, in accordance with the law, for a period of at least 5 years from the date of cessation of the respective international sanctions' implementation.

(2) The regulated entities shall establish systems that allow them to respond fully, immediately and directly, through secure channels provided by the F.S.A., which guarantee the full confidentiality of the requests for information.

(3) The confidentiality agreements and the provisions regarding the professional secrecy from the legislation specific to the regulated entities cannot be invoked in order to restrict the reporting capacity of the regulated entities.

(4) In the situation in which it is necessary to extend the period of keeping the information they hold regarding the implementation of the international sanctions regime, the regulated entities extend the 5-year time limit provided in paragraph (1) with the period indicated by the competent authorities.

Article 9. - (1) According to the nature and size of the activity carried out, the regulated entities designate at least one person from their own staff who shall have responsibilities in coordinating the application of internal procedures for the implementation of international sanctions, including permanent updating of the information held by the entity regarding the international sanctioning regimes in force, managing of the alerts received from F.S.A. or regarding the updating of the information made public on the website of the F.S.A., the Ministry of Foreign Affairs, ANAF and the fulfillment of the reporting obligations, hereinafter referred to as the person designated for the implementation of the international sanctions regime (PDSI).

(2) The name, position and responsibilities established for the person / persons provided in paragraph (1) and his / her contact details are notified to the F.S.A. at least 15 business days before beginning to perform the tasks.

(3) The regulated entities have the obligation to notify the F.S.A. regarding the replacement of the person / persons provided in paragraph (1), within a maximum of 5 days from the date of the respective replacement, in compliance with the provisions of paragraph (2).

(4) The regulated entity shall ensure that the person / persons nominated according to paragraph (1) has / have the knowledge and skills required to fulfill the responsibilities provided by the G.E.O. no. 202/2008 and by this regulation and meets / meet the adequacy conditions for this position. Proof of internal evaluation is made available to the F.S.A. upon request.

(5) The regulated entities shall permanently ensure the training of the personnel in the field of international sanctions implementation, whenever it is necessary, but not later than an interval of 2 years.

Article 10. - (1) In the application of article 7 paragraph (1) and article 12 paragraph (1) of the G.E.O. no. 202/2008, any regulated entity that has data and information about designated persons or entities, that owns or has under control goods or that has data and information about them, about transactions related to goods or in which designated persons or entities are involved, including with regard to other circumstances related to them or with regard to persons who, in any way, are related to these goods, has the obligation to notify immediately the F.S.A. and ANAF or ONPCSB, as the case may be, from the moment it becomes aware of the existence of the situation that requires notification.

(2) The provisions of paragraph (1) shall also apply to the employees of the regulated entities, shareholders, members of the management structure, internal / statutory auditors and other persons who by the nature of their activity come into possession of the data and information provided in paragraph (1).

(3) The information held in connection with the designated persons or entities may be transmitted only under the conditions provided by law.

(4) The reporting person, the person / persons subject to information or reporting, as well as the information received through this information or reporting mechanism shall be treated according to a strict confidentiality regime, the identity of the persons and the information communicated may be disclosed only in the cases and conditions expressly provided by law.

Article 11. - The regulated entities examine the regime of international sanctions on the occasion of the know-your-customer measures provided in the Regulation of the Financial Supervisory Authority no. 13/2019 on the establishment of measures to prevent and combat money laundering and terrorism financing through the financial sectors supervised by the Financial Supervisory Authority, as subsequently amended, to determine whether restrictions on designated persons or entities are incidental or whether operations carried out with them involve goods within the meaning of the GEO no. 202/2008.

Article 12. - (1) The regulated entities that enter into a legal relationship or are in a state of fact with respect to any good that is the subject of an international sanction and that find out about the existence of situations that require notification or reporting according to article 7, respectively article 18 of the G.E.O. no. 202/2008 have the obligation, without delay, prior to the notification of the competent authorities according to article 10 of this regulation, not to perform any operation towards the respective good, in the sense of G.E.O. no. 202/2008.

(2) In the application of article 12 paragraph (1) section b) of the G.E.O. no. 202/2008, the regulated entities have the obligation to immediately notify the F.S.A. in the case of other types of international sanctions.

Article 13. - (1) The regulated entities report to the F.S.A. and ANAF or, as the case may be, to ONPCSB as soon as they become aware of the funds and economic resources that are subject to international sanctions.

(2) The reporting provided in paragraph (1) includes data regarding the persons, contracts and accounts involved, as well as the description and the total value of the goods and is transmitted by filling in the form provided in annex no. 2 to the Plenary Decision of the National Office for Prevention and Control of Money Laundering no. 1426 / 2011 for the approval of the Rules with regard to the mechanism of transmission to the National Office for Prevention and Control of Money Laundering of the reports provided in article 18 of the Government Emergency Ordinance no. 202/2008 on the implementation of international sanctions, as well as of the Form for reporting persons, designated entities and operations involving goods for the purposes of the Government Emergency Ordinance no. 202/2008 on the implementation of international sanctions.

(3) Reporting to the F.S.A. mentioned in paragraph (1) shall be made in electronic format through the communication channel established by the F.S.A. and notified accordingly.

Article 14. - In applying the provisions of article 10 paragraph (1) of the G.E.O. no. 202/2008, the entities may notify in writing the F.S.A. and ANAF or ONPCSB, as appropriate, to report any identification error regarding designated persons or entities, as well as goods.

Article 15. - In applying the provisions of article 8 paragraph (1) and of article 12 paragraph (1) section b) of the G.E.O. no. 202/2008, any person may address to the F.S.A., in writing, a request for obtaining a waiver from the implementation of international sanctions, which shall be accompanied by all relevant documents.

Article 16. - (1) In applying the provisions of article 22 and of article 12 paragraph (1) section b) of the G.E.O. no. 202/2008, the persons who have a right over the goods for the purposes of G.E.O. no. 202/2008, as well as the creditors of the designated persons and entities may request, according to article 15, an authorization for the use of goods that are subject to international sanctions in order to settle the respective obligation.

(2) The persons mentioned in paragraph (1), in justifying their claims against the use of the goods, shall submit the documents specifying the existence of the obligation that they intend to settle through the authorization of the transaction by the F.S.A..

### **CHAPTER III**

#### **Provisions regarding F.S.A. competences**

Article 17. - (1) F.S.A. settles the notifications or requests formulated by the regulated entities, within maximum 15 days from the receipt of the entire documentation, except for the humanitarian situations, when the response deadline is of maximum 5 days from the receipt of the request.

(2) F.S.A. consider only those notifications which contain minimum data enabling their author to be identified and contacted.

(3) In the event that it is found that the notification received is not the subject of its area of competence, the F.S.A. forwards the notification to the competent authority within 24 hours. If the competent authority cannot be identified, the notification shall be sent to the Ministry of Foreign Affairs, in its capacity of interinstitutional council coordinator.

(4) According to the provisions of article 9 paragraph (3) of the G.E.O. no. 202/2008, the decision of the F.S.A. can be challenged according to the provisions of the Law no. 554/2004 on administrative litigation, with subsequent amendments and supplements.

Article 18. - In the process of supervision and control of the international sanctions' implementation, the F.S.A. may order the following specific measures:

a) requests regarding the completion, modification or implementation of policies, internal rules, internal control mechanisms that effectively cover the entire system of the entity designated for the management of international sanctions risk;

b) plan of measures to remedy or eliminate the deficiencies found or to reduce the risks related to the administration of international sanctions;

c) replacement of the designated person / persons with responsibilities in the implementation and compliance with the international sanctions, notified according to article 9.

Article 19. - (1) If, within the supervision and control activity, the F.S.A., through its specialized structures, finds breaches of the obligations regarding the international sanctions from the present regulation or from the G.E.O. no. 202/2008 by the entities provided in article 1 paragraph (2) or by the persons provided in article 9, F.S.A. shall apply sanctions according to the specific legislation applicable to the regulated entity or notify the criminal investigation authorities, as the case may be.

(2) The provisions of paragraph (1) shall apply accordingly for the breach of the obligations set forth in G.E.O. no. 202/2008, breach that shall be sanctioned according to article 26 of the same Emergency Ordinance or the criminal investigation bodies shall be notified by the F.S.A., as the case may be.

(3) The measures established in article 18 may be applied separately or simultaneously with the sanctions provided in paragraph (1) and (2).

## **CHAPTER IV**

### **Transitional and final provisions**

Article 20. - (1) In order to ensure a direct communication channel, the F.S.A. publishes on its website instructions on the format and manner of communication of the information or documents provided for in this Regulation. Until the date of operationalization of the electronic communication channel, the entities shall transmit to F.S.A. the notifications

and reports provided by the G.E.O. no. 202/2008 and by this regulation both on paper and in electronic format, with extended electronic signature.

(2) The persons designated with responsibilities in the implementation and observance of international sanctions, notified to the F.S.A. prior to the entry into force of this regulation, in accordance with the provisions of the regulatory documents mentioned in article 23, are considered persons designated for the purposes of article 9 of this regulation, unless the regulated entity decides to replace them and notifies the F.S.A. in this regard, within a maximum of 30 days from the entry into force of this regulation.

Article 21. - This regulation is completed with the legal provisions incidental to the implementation of the international sanctions at national level issued by the competent authorities, according to law.

Article 22. - This regulation is published in the Official Gazette of Romania, Part I, and becomes effective within 30 days from its publication.

Article 23. - (1) On the date of entry into force of this regulation, the following regulatory documents shall be repealed:

a) Order of the Chairman of the Insurance Supervisory Commission no. 13/2009 for the implementation of the Rules regarding the procedure of supervision, in the field of insurance, of international sanctions implementation, published in the Official Gazette of Romania, Part I, no. 555 of August 10, 2009;

b) Order of the National Securities Commission no. 70/2009 for the approval of Regulation no. 9/2009 on the supervision of international sanctions implementation on the capital market, published in the Official Gazette of Romania, Part I, no. 916 of December 28, 2009;

c) Decision of the Private Pension System Supervisory Commission no. 14/2009 for the approval of the Rule no. 11/2009 on the procedure for supervising the international sanctions implementation in the private pension system, published in the Official Gazette of Romania, Part I, no. 328 of May 18, 2009, with subsequent amendments.

(2) Whenever reference is made in regulatory documents to the provisions repealed according to paragraph (1), the reference shall be deemed to be made to the provisions of this Regulation.

p. Chairman of the Financial Supervisory Authority,  
Elena-Doina Dascălu

Bucharest, November 13, 2020.

No. 25.