

Regulation no. 29/2020

for the amendment and completion of the Regulation of the Financial Supervisory Authority no. 13/2019 on the establishment of measures to prevent and fight against money laundering and terrorist financing through financial sectors supervised by the Financial Supervisory

Effective as of 13 January 2021

Published in the Official Gazette, Part I no. 38 of 13 January 2021.

Version applicable as of 20 May 2021.

Considering the provisions of Art. 1 para. (11), Art. 4 para. (1), Art. 10 para. (6) and (7), Art. 11 para. (1) letter a) and para. (81), art. 13 para. (1) letter e), Art. 14, Art. 17 para. (2) - (3) and (7), Art. 17 para. (14) point 1 letter g), Art. 171, Art. 18 para. (6) letter b), Art. 19 para. (5) letter c), para. (71) and (81), Art. 21 para. (1), Art. 23 para. (1), Art. 24 para. (1) letter f) and para. (7), Art. 26 para. (2), Art. 361 para. (1) and Art. 381 para. (3), (5) and (6) and Art. 59 para. (1) and (3) of Law no. 129/2019 on the prevention and combating of money laundering and terrorist financing, as well as on the amendment and supplementation of some regulatory documents, as subsequently amended and supplemented,

pursuant to the provisions of Art. 2 para. (1), Art. 3 para. (1) letter b) and Art. 6 para. (2) of the Emergency Ordinance no. 93/2012 on the establishment, organization and operation of the Financial Supervision Authority, approved with amendments and supplements by Law no. 113/2013, as subsequently amended and supplemented,

having regard to the provisions of:

- Art. 12 para. (5) letter a) point (v) and Art. 173 para. (1) letter t) of Law no. 237/2015 on the authorization and supervision of the insurance and reinsurance activity, as subsequently amended and supplemented;
- Art. 36 para. (2) letter g) of Law no. 236/2018 on the insurance distribution, as subsequently supplemented;
- Art. 280 para. (1) of Law no. 126/2018 regarding financial instruments markets, as subsequently amended and supplemented;
- Art. 63 para. (6) of Law no. 74/2015 regarding the managers of alternative investment funds, with subsequent amendments and supplements and Art. 151 of Law no. 24/2017 on issuers of financial instruments and market operations;
- Government Emergency Ordinance no. 32/2012 on collective investment undertakings in investment 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. 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;
- Guidelines on cooperation and exchange of information for the purpose of Directive (EU) 2015/849 between competent authorities supervising credit and financial institutions

according to the deliberations of the Board of the Financial Supervisory Authority dated 22 December 2020,

The Financial Supervisory Authority issues this regulation.

Art. I. - The Regulation of the Financial Supervisory Authority no. 13/2019 on the establishment of measures to prevent and fight against money laundering and terrorist financing through financial sectors supervised by the Financial Supervisory, published in the Official Gazette of Romania, Part I, no. 991 of 10 December 2019, as subsequently amended, is hereby amended as supplemented as follows:

1. In Art. 2 para. (2), after letter (b), four new letters, b1) to (b4) are inserted, with the following wording:

" b1) authority responsible for consolidated supervision - the coordinating supervisor defined in Article 1 paragraph (2) point 67 of Law no. 237/2015 on the authorization and supervision of the insurance and reinsurance activity, with subsequent amendments and supplements, respectively the consolidating supervisor defined in Article 4 paragraph (1) point 41 of Regulation no. 575/2013 on prudential requirements for credit institutions and investment companies and amending Regulation (EU) no. 648/2012;

b2) lead supervisory authority:

I. for cross-border units established in at least three Member States, the lead supervisory authority means:

1. the competent authority of the Member State in which the authority responsible for consolidated supervision referred to in point b1) or, where the authority responsible for consolidated supervision is the European Central Bank (ECB), the competent authority of the Member State in which the authority responsible for consolidated supervision was located before the application of Regulation (EU) No. 1024 / 2013.

or

2. for an entity with cross-border units, other than a credit institution or insurer:

(i) which are subsidiaries, the competent authority of the home Member State of the parent company;

(ii) which are not subsidiaries, the competent authority of the home Member State of that entity;

or

3. in the case of an entity operating on a cross-border basis, which is a subsidiary of an entity other than the entities provided in Article 2 section f) -g) of Law no. 129/2019, the competent authority of a Member State, as defined in section 2 points (i) and (ii);

II. for EU units established in at least three Member States, the lead supervisory authority means:

1. between branches and subsidiaries, the competent authority of the Member State in which the subsidiary is established;

2. between subsidiaries or branches, the competent authority of the Member State in which the subsidiary or branch with the highest level of ML/TF risk is established, in accordance with the risk assessment carried out by the authority referred to in section b3);

3. between subsidiaries or between branches with the same risk of ML/TF, the competent authority of the Member State in which the subsidiary or branch with the highest total asset value is established. If the main supervisory authority cannot be identified, the European Securities and Markets Authority or the European Insurance and Occupational Pensions Authority may, on its own initiative or at the request of the FSA, provide assistance, including through mediation;

b3) prudential supervisory authority - the competent authority and / or the supervisory authority:

1. empowered by virtue of an act of law or an administrative rule to supervise the activity of credit institutions;

2. empowered by law or regulation to supervise investment companies;

3. responsible for the authorization and prudential supervision of payment institutions, respectively public authorities / bodies recognized by national legislation or by public authorities particularly authorized for this purpose by national legislation, including national central banks;

4. authorized, by virtue of an act of law or of an administrative rule, to control insurance or reinsurance undertakings;

5. designated to perform the duties provided for in Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision;

6. public authorities, bodies recognized by national law or bodies recognized by public authorities expressly empowered in this respect by national law;

b4) AML/CTFboard - permanent structure consisting of the main supervisory authority, permanent members and observers in order to cooperate and exchange information between them, in order to supervise an entity operating at cross-border level;".

2. In article 2 para. (2), after letter c) a new letter is inserted, letter c1), as follows:

" c1) entities operating at cross-border level - regulated entities with branches established in another Member State or in a third country or a group with subsidiaries and branches established in a Member State or in a third country;".

3. In article 2 para. (2), letter d) is amended as follows:

" d) reporting entities - the Romanian legal entities financial institutions and the branches of the foreign legal entities financial institutions, mentioned in Article 2 section g) points 2-7 and Article 5 paragraph (1) section b) and c) of Law no. 129/2019, hereinafter referred to as regulated entities;"

4. In article 2 para. (2), after letter q) two new letters are inserted, letters r) and s), as follows:

" r) EU unit - a direct or indirect subsidiary established in a Member State of a third country entity or a branch established in the EU or reporting entities operating units in another Member State belonging to that third country entity, or any of its EU subsidiaries;

s) cross-border unit - a branch or reporting entity of an entity operating in a Member State other than the Member State in which it is headquartered or in a third country or a subsidiary of a parent company established in another Member State than the Member State in which the parent company was established or in a third country;"

5. In article 3, para. (2) is amended as follows:

" (2) The risk assessments provided in paragraph (1) shall be updated at least every 2 years or whenever there are changes within the national and sectoral AML/CTF assessments, the technical regulatory standards in the field adopted by the European Commission and the risk factors provided by Law no. 129/2019, the requirements of the present regulation and, as the case may be, the evaluations performed at the level of the group to which the regulated entities belong."

6. In article 3 para. (3), letter d) is amended as follows:

" d) the procedure for taking into account the risk factors identified in determining the degree of risk associated with clients, products and services, distribution channels for products and services and, as appropriate, outsourced activity and activity carried out through branches and subsidiaries owned in majority in EU Member States and third countries;"

7. In article 3 para. (5), letter m) is amended as follows:

" m) the directions and general measures considered appropriate for reducing the risk of ML/TF established by risk assessment, by components and at the level of the entire activity carried out, including, if applicable, for the activity carried out through the majority branches and subsidiaries located in EU members states or third countries;"

8. In article 3 para. (5), after letter n) a new letter is inserted, letter o), as follows:

" o) the relevant deadline for the common elements of the related operations, as well as any other scenarios that could give rise to related transactions."

9. In article 4, para. (1) is amended as follows:

" (1) The regulated entities approve, monitor and review whenever necessary, but not later than an interval of 2 years, at the level of the management structure defined in Article 2 paragraph (2) section o), based on the own risk assessments provided in Article 3, the policies, internal norms, mechanisms and procedures for managing the ML/TF risks, as well as the methodology, in accordance with the provisions of Article 24 paragraph (1), (3) and (7) and Article 25 paragraph (3) of Law no. 129/2019,

taking into account, at the same time, the elements mentioned in Article 3 paragraph (3) and (4) of this Regulation."

10. In article 5 para. (3), letter a) is amended as follows:

" a) planning the risk assessment and monitoring at least every 2 years, so as to ensure the inclusion of new risks; if the regulated entity is aware that a new risk has arisen or that an existing risk has increased, this should be reflected in the risk assessments as soon as possible;"

11. In article 6, para. (3) is amended as follows:

" (3) The regulated entities apply additional measures to face the risk of ML/TF, in case the legislation of the state where the branch or subsidiary is held in a majority proportion does not allow the application of the policies provided by paragraph (1), and inform the FSA immediately."

12. Article 8 is amended as follows:

"

ARTICLE 8

Appointment of compliance officers and designated persons

(1) In the application of Article 23 paragraph (2) of Law no. 129/2019, the regulated entities establish the ML/TF compliance officer by the resolution or decision of the board of directors / sole administrator or, as the case may be, of the supervisory board of the regulated entity.

(2) The ML/TF compliance officer, appointed according to paragraph (1), may be any person who meets the conditions established in Law no. 129/2019, including those of adequate training and management of conflicts of interest, as follows:

a) one of the members of the management structure, within the meaning of the provisions of Article 2 paragraph (2) section g) of the FSA Regulation no. 1/2019;

b) the person exercising the key function corresponding to the compliance / internal control officer, defined according to Article 2 paragraph (2) section p) point (ii) of the FSA Regulation no. 1/2019, provided that it is exercised by a person with a senior management position, as defined in Article 2 section o) of Law no. 129/2019;

c) another person with a management position with specific attributions in the ML/TF matter, directly subordinated to the board of directors / supervisory board.

(3) The ML/TF compliance officer has decision-making power for the implementation of the regulated entity's internal policies and procedures in the field of preventing and controlling ML/TF.

(4) In the application of Article 23 paragraph (1) of Law no. 129/2019, the regulated entity appoints one or several ML/TF designated persons with responsibilities in the implementation of Law no. 129/2019 and of the regulations issued in its application.

(5) The notification of the ML/TF compliance officer to FSA is made by sending the completed form provided in annex no. 5 at least 15 business days before starting the exercise of the attributions, specifying the nature and limits of the entrusted responsibilities.

(6) The notification of the ML/TF designated person to FSA is made by sending the completed form provided in annex no. 6 at least 15 business days before starting the exercise of the attributions.

(7) In the application of Article 23 paragraph (2), corroborated with Article 24 paragraph (5) and (6) of Law no. 129/2019, the regulated entities establish and document the requirements and conditions for the appointment of the ML/TF compliance officer, as well as regarding the recruitment and appointment of the ML/TF designated person / persons.

(8) In the application of Article 23 paragraph (2), corroborated with Article 24 paragraph (6) of Law no. 129/2019, the regulated entities establish and document the standards for designating the ML/TF compliance officer who coordinates the implementation of internal policies and procedures in the field of preventing and controlling ML/TF.

(9) The standards for the designation of the compliance officer, mentioned in paragraph (8), shall be made available to the FSA, at its request, and shall include requirements established by the regulated entity in the recruitment process to ensure that the designated / appointed person has sufficient experience and knowledge to effectively perform its tasks, as well as a good reputation."

13. In article 9, paragraphs (5) and (6) will be amended as follows:

" (5) The ML/TF compliance officers and the ML/TF designated persons are responsible for fulfilling the tasks established in the application of Law no. 129/2019 and of this regulation, insofar as the regulated entity provided the internal operational and procedural framework for fulfilling the legal obligations of AML/CTF.

(6) The regulated entity shall ensure to the compliance officer and, as the case may be, to the ML/TF designated person the direct, permanent access, in a complete and unaltered form, to the information and documents necessary in their activity and shall be responsible for fulfilling this obligation."

14. In article 11, paragraphs (3), (5) and (6) will be amended as follows:

" (3) The regulated entities ensure the continuous training of their own employees, in accordance with the provisions of paragraph (4).

.....

(5) The regulated entities verify annually that the persons with responsibilities in the implementation of AML/CTF measures are adequately prepared and know their attributions.

(6) The regulated entities include in the job descriptions of the employees the specific and concrete attributions incumbent on them regarding the implementation of the AML/CTF rules."

15. In article 13, para. (3) is amended as follows:

" (3) The factors underlying the assessment of the ML/TF risk associated with business relationships and occasional transactions are constantly analyzed by regulated entities in order to keep their relevance up to date."

16. In article 16, paragraphs (3) and (5) will be amended as follows:

" (3) When assessing the ML/TF risks, the factors characteristic of the situations with increased potential risk mentioned in Article 17 paragraph (1) and to Article 171 paragraph (1) of Law no. 129/2019.

.....

(5) The regulated entities periodically update the risk assessments of ML/TF and the methodology for their implementation and updating whenever necessary, including taking into account the changes in the development strategy and organizational structure of the entity."

17. In article 16, after para. (5) a new paragraph is inserted, para. (6), as follows:

" (6) Updating the risk assessment mentioned in paragraph (3) and the adaptation of client awareness measures must be proportionate and commensurate with the ML/TF risk."

18. In article 17, para. (1) is amended as follows:

" (1) The regulated entities have adequate risk management systems to determine the set of know-your-customer measures applicable to each client, with a particular focus on the need to establish whether the provisions of Article 17 and 171 of Law no. 129/2019 are incidental."

19. In article 18, para. (3) is amended as follows:

" (3) If the regulated entity uses IT systems for the allocation of general risk scores in order to classify business relationships or occasional transactions and does not develop such systems internally, but purchases them from an external supplier, it shall ensure that:

- a) understands how the system works and how it combines risk factors to obtain a general risk score;
- b) always has the possibility to ensure that the assigned scores reflect the understanding of the regulated entity regarding the risk of ML/TF;
- c) can demonstrate the aspects mentioned in section a) and b) at the request of the FSA."

20. In article 18, para. (4) is repealed.

21. In article 21 para. (3), letter i) is amended as follows:

" i) the ways of approaching transactions and clients to and / or from third countries, referred to in Article 17 paragraph (1) section d), paragraph (4), Article 171 and Article 24 paragraph (8) of Law no. 129/2019 or identified by the regulated entity as having a high risk;"

22. In article 21, para. (6) is amended as follows:

" (6) The regulated entities evaluate and review the internal rules of knowing the clientele whenever it is necessary or once at an interval of at least 2 years, according to the provisions of Article 5, including in order to correct the deficiencies identified as a result of internal audits and supervisory actions carried out by the FSA."

23. In article 21, para. (7) is repealed.

24. In article 22 para. (1), the introductory part is amended as follows:

" (1) In the application of Article 11 paragraph (1), (3) and (81) and Article 15 paragraph (1) of Law no. 129/2019, when establishing a business relationship or performing an occasional transaction, the regulated entities must obtain and take over in their own records, in order to verify the identity of the individual client, the beneficial owner and their specific risk factors, prior to initiating or completing the business relationship or carrying out the occasional transaction, at least the following information in complete and accurate form regarding:".

25. In article 22 para. (1) point 1, letter f) is amended as follows:

" f) citizenship and country of origin;".

26. In article 22 para. (1) point 1, letter i) is repealed.

27. In article 22 para. (1) point 1, letter m) is amended as follows:

" m) information regarding the beneficial owner, if different from the client, respectively name and surname, date of birth, personal numerical code or its equivalent for foreigners or, if applicable, another similar unique identification element, country of residence, citizenship , the nature of the relationship that generated the qualification in this capacity, as well as the nature of the activity they carry out, classification in the category of publicly exposed persons or holding the quality of family member of a publicly exposed person or of a person known as a close associate of a publicly exposed person and information regarding his/her specific risk factors;".

28. In article 22 para. (1) point 2, the introductory part is amended as follows:

" 2. in the case of legal entities, trusts or legal constructions similar to them or entities without legal personality, in application of Article 11 paragraph (1) and (3) and Article 15 paragraph (1) section b) and c) of Law no. 129/2019, information on:".

29. In article 22 para. (1) point 2, letter c) is amended as follows:

" c) tax identification code and / or the registration number in the trade register / European identification code (EUID) and / or equivalent information for foreign legal entities;".

30. In article 22 para. (1) point 2, letters d) and g) is repealed.

31. In article 22 para. (1) point 2, letters i) and m) will be amended as follows:

" i) the registered office and, if applicable, the actual office or, as the case may be, the registered office of the branch;

.....

m) the name of the beneficial owner and his identification data, the nature of the relationship that generated the qualification in this capacity, the nature of the activity he carries out or, in the case of trusts, all the following persons:

(i) the constituent (s);

(ii) the trustee (s);

(iii) the protector (s), if any;

(iv) the beneficiaries or, if the persons benefiting from the legal construction or legal entity have not yet been identified, the category of persons in whose main interest the legal construction or legal entity is established or operates;

(v) any other natural person exercising ultimate control over the trust by the direct or indirect exercise of ownership or by other means;"

32. In article 22 para. (1) point 2, after letter m) a new letter is inserted, letter m1), as follows:

" m1) proof of registration of the beneficial owner or information from the central registers provided in Article 19 paragraph (5) of Law no. 129/2019 or similar registers from other jurisdictions, if these data are available;"

33. In article 22, paragraphs (2) - (4), (8) and the introductory part of para. (9) will be amended as follows:

" (2) In the implementation of Article 11 paragraph (4) of Law no. 129/2019, if a client is represented in relation to the regulated entity by another person, acting as legal representative, proxy, trustee, guardian or in any other legal capacity, the entity obtains and verifies the appropriate information and documents regarding the identity of the representative, the nature and limits of the representation. In order to identify the person representing the client, the entities obtain at least the following information:

a) name and surname;

b) date and place of birth;

c) personal identity code or, if applicable, another similar unique identification element;

d) address where he lives and the identification of its legal regime, respectively if it is domicile, residence or other type of identification attribute of the same type;

e) citizenship.

(3) Regulated entities shall apply know-your-customer-customer and record keeping measures to all their majority - owned branches and subsidiaries located in EU Member States and third countries.

(4) The regulated entities apply the know-your-customer-customer measures not only to new clients, but also to existing clients, depending on the materiality and based on the risk assessment, taking into account the moment when the know-your-customer-customer measures were previously applied and their relevance, including when relevant client circumstances change or if regulated entities have a legal obligation to contact the client during the relevant calendar year to examine all relevant information about the beneficial owner or if regulated entities have this obligation pursuant to the provisions of Article 62 of Law no. 207/2015 on the Fiscal Procedure Code, with subsequent amendments and supplements.

.....

(8) The regulated entities verify the information on the beneficial owner provided by natural or legal clients, by any appropriate method adapted to the situation, taking into account the source and volume of funds involved in the business relationship or occasional transaction, and in the case of clients, trusts or legal constructions similar to them or to entities without legal personality have the obligation to obtain the proof of registration of the beneficial owners or information from the registers provided in Article 19 paragraph (5) of Law no. 129/2019 or similar registers from other jurisdictions, if these sources are available.

(9) In the application of Article 11 paragraph (1) section b) and paragraph (3) and Article 17 paragraph (1) of Law no. 129/2019, in the case of clients of legal entities, trusts or other similar constructions, the entities verify the information regarding the beneficial owner by methods such as those provided in paragraph (7) and (8) or, if such verifications are not available, by other appropriate methods, in cases where from the documents and information they hold or in relation to the plausibility of the information obtained from clients:".

34. In article 23, para. (1) is amended as follows:

" (1) The regulated entities must have mechanisms for the periodic or any necessary verification, both in terms of veracity and in terms of adequacy, of the information held about the client and about the beneficial owner, proportional to the level of associated risk, which provides the entity with a reasonable assurance that the established transactional profile is correct and the monitoring process is efficient."

35. In article 25 para. (1), letter d) is amended as follows:

" d) if the regulated entity has doubts regarding the veracity or sufficiency of the identification information previously obtained by applying the know-your-customer measures."

36. In article 25 para. (2), letter a) is amended as follows:

" a) identification of the client and verification of his identity on the basis of documents, data or information obtained from secure and independent sources, including, if available, by means of electronic identification and relevant reliable services provided by Regulation (EU) No. 910/2014 of the European Parliament and of the Council of July 23, 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1.999 / 93 / EC, hereinafter referred to as Regulation (EU) no. 910/2014, or by any other secure identification process, remote or electronic, regulated, recognized, approved or accepted at national level by the Authority for the Digitalization of Romania;".

37. In article 25, after para. (4) two new paragraphs are inserted, paragraphs (41) and (42), as follows:

" (41) The regulated entities have the obligation to obtain a proof of the registration of the beneficial owners or information from the central registers of the beneficial owners provided in Article 19 paragraph (5) of Law no. 129/2019, in compliance with the rules regarding the protection of personal data, whenever they start a new business relationship with persons who are subject to the obligation to register information regarding the beneficial owner.

(42) Regulated entities shall inform the Office and the authorities managing those registers of any discrepancy between the information available in the central registers concerning the beneficial owners and the information they hold concerning the beneficial owners."

38. In article 26 para. (4) letter a), point (i) is amended as follows:

" (i) verification of identity on the basis of information obtained from a small number of credible and independent documents or sources; or "

39. In article 27, para. (4) and the introductory part of para. (5) will be amended as follows:

" (4) In applying the provisions of Article 17 paragraph (7) of Law no. 129/2019, regarding the cross-border correspondent relations, the regulated entities have and apply policies and procedures that allow the understanding of the nature of the activity of the respondent institution and the evaluation of the mechanisms implemented by it. In its own assessments regarding the responding institution, the regulated entity takes into account the recommendations issued by FSA and other institutions provided in Article 1 paragraph (1) of Law no. 129/2019.

(5) In the case of cross-border correspondent relations with credit and financial institutions in other States or jurisdictions, the regulated entity shall apply the following measures, before establishing a correspondent relationship, without limiting the enumeration:"

40. In article 27 para. (7), letter d) is amended as follows:

" d) increase the degree and nature of monitoring the business relationship in order to establish whether the respective transactions or activities are suspicious;"

41. In article 28, paragraphs (6) and (7) is repealed.

42. In article 29 para. (2), letter b) is amended as follows:

" b) upon request, copies of the documents on the basis of which the third party applied the know-your-customer measures provided by Law no. 129/2019 and this Regulation, including, where available, data obtained by electronic means of identification, relevant trusted services provided for in Regulation (EU) no. 910/2014 or through any other secure identification process, remote or electronic, regulated, recognized, approved or accepted by the Authority for the Digitalization of Romania."

43. In article 30 para. (1), letter a) is amended as follows:

" a) all records obtained by applying know-your-customer measures, such as copies of identification documents, monitoring and verifications performed and the results of analyses performed in connection with the client, client files and correspondence, including information obtained through the means of electronic identification, the relevant trusted services provided for in Regulation (EU) no. 910/2014 or through any other secure identification process, remote or electronic, regulated, recognized, approved or accepted by the Authority for the Digitalization of Romania , necessary for the observance of the know-your-customer requirements;"

44. In article 31, para. (3) is amended as follows:

" (3) Upon the expiry of the storage period mentioned in Article 30 paragraph (2), the regulated entities may delete the personal data, except for the situation in which the regulated entity is, at the

fulfillment of this term, in an evaluation, supervision or control procedure performed by the competent authorities, according to the legal competences. In this situation, the data can be deleted only after the completion and implementation of the measures ordered by the individual documents issued by the competent authorities."

45. In article 34, para. (1) is amended as follows:

" (1) Regulated entities shall identify transactions or types of suspicious transactions performed in the name or on behalf of their clients."

46. In article 40, the introductory part of para. (2) and para. (3) will be amended as follows:

" (2) In the case of the assessment of regulated entities, the FSA shall take into account the information that can be obtained from the prudential supervision and / or conduct at general level, which may include, but are not limited to, the following:

.....

(3) the case of evaluation of a category of regulated entities, FSA identifies the relevant factors according to paragraph (1) to define the risk profile it assigns to the category. For this purpose, the information collected shall also include the results of previous supervisory actions carried out on the regulated entities included in that category."

47. In article 41, para. (3) is amended as follows:

" (3) After the completion of the risk assessment provided in paragraph (2), the FSA publishes on its website the relevant elements of the ML/TF risk assessment at the level of the supervised sectors so that the regulated entities be able to review their own risk assessments."

48. The name of Article 43 is amended as follows:

"

ARTICLE 43

The risk-based approach to the supervisory action in the field of ML/TF of regulated entities"

49. In article 43 para. (2), letter h) is amended as follows:

" h) the reports on the way in which the regulated entity applies the policies and procedures for the prevention of ML/TF in third countries, at the level of majority owned branches and subsidiaries located in Member States and in third countries;"

50. In Chapter III, after section 1, a new section 11 is inserted, comprising articles 431 and 432, as follows:

"

SECTION 11

Cooperation and exchange of information with other authorities

ARTICLE 431

Cooperation and exchange of information with authorities and institutions with responsibilities for preventing and controlling ML/TF

(1) The FSA shall cooperate and exchange information with:

- a) the authorities and institutions provided in Article 1 paragraph (1) of Law no. 129/2019 for the implementation of policies and activities to control ML/TF;
- b) the authorities and national bodies of other Member States responsible for the supervision of credit institutions and financial institutions, based on cooperation agreements on controlling money laundering and countering the financing of terrorism;
- c) the competent authorities of third countries with similar responsibilities, based on cooperation agreements on controlling money laundering and countering the financing of terrorism concluded on the basis of reciprocity and only on condition that the information disclosed is subject to a guarantee of professional secrecy at least equivalent to those mentioned in Article 381 paragraph (1) of Law no. 129/2019.

ARTICLE 432

AML/CTF Board

(1) In order to identify the fulfillment of the conditions for the establishment of a ML/TF control board, for the cooperation and exchange of information with other competent authorities, in order to prevent and control ML/TF, FSA shall ensure the following steps:

1. identification and correspondence of information on:

- (i) regulated entities authorized by the FSA performing cross-border activities and their cross-border units in other Member States or in third countries;
- (ii) cross-border units and EU units carrying out activities supervised by the FSA in Romania;
- (iii) third country entities that have links (subsidiary / branch) with the EU units referred to in point (ii);

2. the notification to the relevant European Supervisory Authorities (ESMA, EIOPA) of the completion / updating of the correspondence, including at least:

- (i) the names of all Member States, the European Free Trade Association (EFTA) States that are part of the European Economic Area (EEA) and the third countries in which the regulated entity operates across borders;

(ii) the names of all Member States, of the European Free Trade Association (EFTA) states that are part of the European Economic Area (EEA) in which a third country entity has units in Romania and in the Member States, if this situation is known by FSA;

(iii) the name of the third country in which the entity in the third country in connection (subsidiary / branch) with a regulated entity in Romania has its head office;

(iv) the level of ML/TF risk associated with the regulated entity operating at cross-border level, with cross-border units and with EU units, as far as this level is known to the FSA, in accordance with the provisions of this Regulation.

(2) After the correspondence of the information presented at paragraph (1), the main supervisory authority shall identify the entities operating at cross-border level and fulfilling the conditions for the establishment of an ML/TF control board.

(3) FSA, as the main supervisory authority, establishes and maintains ML/TF control boards in the following situations:

a) the entity regulated by the FSA carrying out its activity at cross-border level has set up cross-border units in at least two Member States, other than Romania;

b) an entity from a third country has established units in Romania and in at least two other Member States, and the unit in Romania is an entity regulated and supervised by the FSA at a consolidated level.

(4) In case of application of paragraph (3), the FSA shall identify the competent authorities to be invited as permanent members or observers, establish the form and frequency of meetings of the ML/TF control board and draw up the list containing the names and contact details of the members of the ML/TF control board thus constituted:

a) permanent members: the competent authorities responsible for the supervision of ML/TF control of cross-border units of entities operating at cross-border level, the competent authorities responsible for the control of ML/TF of EU, ESMA or EIOPA units, as the case may be;

b) observers: the prudential supervisory authorities of entities operating at cross-border level, cross-border and EU units and ML/TF control authorities in third countries where cross-border units operate; the prudential supervisory authorities of the third countries in which the cross-border establishment operates and the Office of the Member State in which the principal supervisory authority is located may be invited to participate;

c) guests: FSA, on its own initiative or at the request of a permanent member, also invites other relevant participants, for example, the Office from another Member State than the one mentioned in section b), auditors, consultants, resolution authorities, the Single Resolution Committee or deposit guarantee schemes.

(5) The FSA shall review and update the correspondence periodically and on an ad hoc basis when there are relevant changes in the ownership structure of the regulated entity operating across borders or of the third country entity.

6. The FSA shall participate as a permanent member or observer in ML/TF control boards set up by other supervisory authorities in other Member States at the invitation of the lead supervisory authority,

conclude a written agreement for cooperation and exchange of information and keep the confidentiality of non-public information obtained within boards.

(7) Upon receipt of the invitation to participate as a permanent member, the FSA shall confirm to the main supervisory authority its participation within 10 business days.

(8) The FSA shall request and provide mutual assistance in any matter related to the fight against ML/TF and shall cooperate in the field of surveillance and exchange of information."

51. In article 46, para. (1) is amended as follows:

" (1) The FSA shall notify the Office of the following:

a) facts that could be related to ML/TF identified within the exercise of the attributions of authorization, supervision and control of the regulated entities;

b) violation of the provisions of Law no. 129/2019."

52. In article 48, para. (2) is amended as follows:

" (2) Annexes no. 1-6 are an integral part of this regulation."

53. In Annex no. 1 letter A para. (4), after letter l) a new letter is inserted, letter m), as follows:

" m) the client is a third-country national requesting residence rights or Romanian citizenship in exchange for capital transfers, the acquisition of state property or bonds or investments in corporate entities."

54. After Annex no. 4, two new annexes are inserted, Annexes no. 5 and 6, with the content provided in Annexes no. 1 and 2, which are an integral part of this Regulation.

Art. II. - (1) The persons appointed as ML/TF compliance officers, respectively ML/TF designated persons according to the provisions of the Regulation of the Financial Supervisory Authority no. 13/2019, as subsequently amended, as well as with the amendments and supplementations made by this regulation, and notified to the Financial Supervisory Authority prior to the entry into force of this regulation are considered ML/TF compliance officers and ML/TF designated persons within the meaning of art. 8 of the aforementioned regulation, without being necessary to notify them by submitting the form provided by Annex no. 5, respectively Annex no. 6 to the aforementioned regulation.

(2) The regulated entities implement the provisions of art. 3 para. (3) letter d), art. 3 para. (5) letter m) and o), art. 8 para. (8), art. 16 para. (3), art. 21 para. (3), art. 22 para. (2), (4) and (8) of the Regulation of the Financial Supervisory Authority no. 13/2019, as subsequently amended, as well as with the amendments and supplementations made by this regulation, within 90 days from the date of entry into force of this regulation.

Art. III. - This Regulation shall be published in the Official Gazette of Romania, Part I, and shall enter into force on the date of its publication.

President of the Financial Supervisory Authority,

Nicu Marcu

Bucharest, 28 December 2020.

No. 29.

ANNEX No. 1

(Annex no. 5 to Regulation no. 13/2019)

ML/TF CONFORMITY OFFICER NOTIFICATION

No.	Subject / Question	Answer		Explanation		
		YES	NO			
1.	Regulated entity			Name	Headquarters	Type of entity
2.	Identity of the candidate (Foreign nationals also specify the date on which they have established or are to establish their domicile or residence in Romania.)			First and last name		
				Name on the birth certificate (if different)		
				PIN (personal identity number)		
				Series and number of the identity document, issuer and date of issue		
				Date and place of birth		
				Citizenship / Nationality		
				Domicile and / or residence		
				Contact details: telephone and e-mail		
3.	Position held			Description of attributions and responsibilities		
				Start date and term of office		
4.	Function of ML/TF compliance officer			Description of attributions and responsibilities		
				Start date of the activity		
				The person who replaces him / her		
5.	Access to information for the ML/TF compliance officer			Type of access	Information access method	
				direct	indirect	electric support
					electronic support	other type of access (specify)

				necessary documents or profile information	see note *	access to original documents	access to applications AML/CTF profile	IT of	according to the case)
						YES	NO	YES	NO

* Punctually detail the flow of obtaining information regarding the relationship with clients or financial operations, including the persons / employees who mediate the obtaining of such information, specifying their quality within the entity.

Declaration signed by the legal representative of the company, according to which:

I, the undersigned,, acting as legal representative of., hereby mention that the assessment of the notified person was carried out following the observance of the legal provisions and internal policies regarding the requirements of professional competence and moral probity, according to which the notified person was deemed suitable to exercise the assigned duties, and declare that the information provided in the notification is correct and complete.

Date

..... Signature
.....

Declaration signed by the person proposed for the position of ML/TF compliance officer, stating that:

I, the undersigned¹,, being aware of the provisions of Article 326 of the Criminal Code regarding false statements, hereby declare on my own responsibility the following:

1 Fill in the name and surname as they appear in the identity document.

- a) all the information provided is correct, complete and in accordance with reality;
- b) there are no other facts on which the Financial Supervisory Authority (FSA) and the regulated entity should be informed.

At the same time, I mention that I agree with the processing of personal data² for the purpose of exercising the attributions of FSA and of the regulated entity and I undertake to communicate to FSA and to the regulated entity all the changes regarding the information provided.

2 (EU) Regulation 2016/679 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46 / EC.

Signature

.....

Date

.....

NOTE:

FSA and the regulated entity shall maintain the confidentiality of the information contained in the responses to this statement, except as provided by law.

ANNEX No. 2

(Annex no. 6 to Regulation no. 13/2019)

NOTIFICATION OF THE ML/TF DESIGNATED PERSON

I, the undersigned,, acting as legal representative of, hereby notify

☐ the appointment of Mrs/Mr.

☐ the replacement of the ML/TF designated person¹, of Mrs. / Mr., having regard to the termination of office as from, with Mrs. / Mr., PIN., nationality., citizenship., telephone number². and email address., also occupying the position of³, as of

¹ The name of the person who is replaced and the date of termination of the position, the decision of termination shall be mentioned.

² Contact details of the ML/TF designated person.

³ The function it cumulates.

The attributions and responsibilities of the ML/TF designated persons are. according to.⁴ and to the job description.

4 Act of appointment (decision, resolution).

The ML/TF designated person has:

- direct access to necessary profile documents or information YES / NO;
- direct access to original documents YES / NO;
- direct access to IT applications of AML/CTF profile YES / NO;
- other type of access (Indicate which type of access) YES / NO.

I hereby mention that the assessment of the notified person was carried out in compliance with the legal provisions and internal policies regarding the requirements of professional competence and moral probity, according to which the notified person was deemed suitable to perform the assigned tasks, and declare that the information provided in the notification is correct and complete.

Signature

.....

Date

.....

NOTE:

The Financial Supervisory Authority and the regulated entity shall keep the information contained in the responses to this statement confidential, except as provided by law.