

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

*Form consolidated on 25 May 2021.*

*Includes amendments/supplements made by:*

- *GEO no. 12/2013;*
- *Law no. 113/2013;*
- *GEO no. 55/2013;*
- *GEO no. 78/2013;*
- *Law no. 260/2013;*
- *GEO no. 94/2013;*
- *Law no. 10.*
- *Law no. 147/2021.*

*Given the dysfunctions found, especially in the recent period, in the activity carried out in the capital market and the insurance sector, it is necessary to adopt legislative measures to ensure the efficiency of the sectoral supervision activity performed outside the area of competence of the central bank.*

*It is necessary to take these measures as a matter of urgency, given that there is a risk that, in the current context of economic tensions, these dysfunctions will undermine, through contamination, public confidence in the services provided by the entire financial system and in the way in which their supervision is performed.*

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

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

**The Government of Romania** hereby adopts this emergency ordinance.

### **CHAPTER I General dispositions**

**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 FSA, is established as an autonomous, specialized administrative authority, with legal personality, independent, self-financed, which exercises its powers according to the provisions of this emergency ordinance, by taking over and reorganizing all powers and prerogatives of the National Securities Commission (NSC), the Insurance Supervisory Commission (ISC) and the Private Pension System Supervisory Commission (PPSSC).

(3) In the exercise of its duties, established by the present normative act, the activity of FSA will not be restricted by any other authority.

(3<sup>1</sup>) The legal provisions regarding budgetary restrictions of any nature applicable to the National Bank of Romania also apply to the Financial Supervisory Authority.

*(introduced by GEO no. 94/2013)*

(4) FSA has its headquarters in Bucharest and may have secondary offices and representative offices depending on needs.

**Art. 2. -** (1) For the purposes of this emergency ordinance, FSA exercises powers of authorization, regulation, supervision and control over:

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 counterparties; market operations; security issuers; Investor Compensation Fund; other natural or legal persons carrying out activities according to the provisions of the Law no. 297/2004 on the capital market, as subsequently amended and supplemented, the Government Emergency Ordinance no. 32/2012 on the undertakings for collective investment and the investment management companies, and for the amendment and completion of Law no. 297/2004 on the capital market, Government Emergency Ordinance no. 25/2002 approving the statute of the National Securities Commission, approved with amendments and completions by Law no. 514/2002, with subsequent amendments and supplements, Law no. 253/2004 on the final nature of settlement in the payment systems and in the financial instruments operations settlement, with subsequent amendments and supplements, Government Ordinance no. 9/2004 on certain financial security contracts, approved with amendments and supplements by Law no. 222/2004, as subsequently amended and supplemented, Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, approved with amendments and supplements by Law no. 227/2007, as subsequently amended and supplemented;

b) insurance, insurance-reinsurance and reinsurance undertakings, mutual societies, hereinafter referred to as insurers and reinsurers, as well as insurance intermediaries, supervision of insurers and reinsurers operating in or from Romania, supervision of insurance and reinsurance intermediaries, as well as other activities related to them, according to the provisions of the Law no. 136/1995 on insurance and reinsurance in Romania, as subsequently amended and supplemented, Law no. 32/2000 on insurance activity and insurance supervision, 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 recovery and bankruptcy of insurance undertakings, as subsequently amended;

c) private pension system, according to Law no. 411/2004 on 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 with amendments and supplements 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 pensions System Rights Fund, Government Emergency Ordinance no. 61/2008 on the implementation of the principle of equal treatment between women and men with regard to 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, as well as financial operations and instruments regulated by secondary legislation issued prior to the entry 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) FSA is the competent authority in Romania within the meaning of art. 22 (1) of Regulation (EC) no. 1.060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, as subsequently amended and supplemented, and has the powers and competences established by it, exercised in accordance with the provisions of its own statute.

(3) FSA is the competent authority in Romania within the meaning of art. 11 of the Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on

insider dealing and market manipulation (market abuse), as subsequently amended and supplemented.

(4) FSA is 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 of the Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.

(5) FSA is the competent authority at national level for the application and monitoring of compliance with directly applicable regulations issued by the European Union, in the areas provided by this normative act, as well as for transposition and implementation in national legislation of those provisions issued by the EU Council, the EU Parliament, the European Commission and other European authorities.

(6) FSA is the only national authority competent to represent Romania's interests within the International Organization of Securities Commissions - IOSCO, the European Securities and Markets Authority - ESMA, the European Insurance and Occupational Pensions Supervisory Authority - EIOPA and the International Association of Insurance Supervisors - IAIS, being a full member of these international authorities, based on the applicable international legislation.

(7) Based on international agreements to which it is a party, FSA will be able to respond to requests for information for investigations that do not represent violations of Romanian law, but represent violations in those states that are signatories to those international agreements.

*(inserted by Law no. 10/2015)*

(8) FSA is the competent authority in Romania within the meaning of art. 10 (5) of Regulation (EU) no. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

*(inserted by Law no. 10/2015)*

**Art. 3.** - The supervision exercised by FSA, provided in art. 2 (1) , is achieved by:

- a) granting, suspending, withdrawing or refusing to grant, as the case may be, in accordance with the law, authorizations, approvals, endorsements, certificates, derogations;
- b) issuing regulations, which are published in the Official Gazette of Romania, Part I;
- c) exercising control over the entities and operations provided in art. 2 (1) based on the reports received and on-site verifications;
- d) ordering measures and enforcing sanctions.

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

a) to ensure fulfilment of its obligations as a competent authority under Regulation (EU) no. 1.094/2010 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/CE and repealing the Commission Decision 2009/79/EC;

b) to provide EIOPA with all necessary information on the Member States in which the entities falling within its area of authorization, regulation and supervision operate;

c) to immediately inform EIOPA when granting prior authorization to operate an entity in the case of cross-border activity;

d) to immediately notify EIOPA of the reasoned decision to prohibit the activities of an entity, taken in accordance with its competence;

e) to report to EIOPA prudential national provisions relevant to the field of private pensions, which are not covered by labor and social protection legislation, and to ensure that this information is updated at least every 2 years;

f) to inform EIOPA and the European Commission of any major difficulty in carrying out its work, governed by national rules harmonized with European Union law.

*(inserted by GEO no. 78/2013)*

**Art. 4.** - FSA, the members of the management and its staff will not request and will not accept instructions of any nature from any other institution, body or authority in the exercise of their duties conferred by law.

**Art. 4<sup>1</sup>** - Any draft normative act of the central public authorities, except those initiated by the members of the Parliament, regarding the FSA and the areas in which it has duties, is adopted after the prior approval of the FSA opinion has been requested. The opinion will be transmitted within 15 days as of request.

*(inserted by GEO no. 94/2013)*

## CHAPTER II

### Objectives, duties and prerogatives

**Art. 5.** - In exercising the duties and prerogatives provided by this emergency ordinance, FSA contributes to the consolidation of an integrated framework for the operation and supervision of the markets, participants and operations on such markets and has as objectives:

a) ensuring the stability, competitiveness and proper functioning of financial instrument markets, promoting confidence in these markets and in investments in financial instruments, as well as ensuring the protection of operators and investors against unfair, abusive and fraudulent practices;

b) promoting the stability of the insurance activity and defending the rights of the insured;

c) ensuring the efficient operation of the private pension system and protecting the interests of participants and beneficiaries.

**Art. 6.** - (1) The duties and prerogatives conferred to the FSA, including the conditions for exercising them, as well as the measures and sanctions that may be applied by the FSA are those of the normative acts provided in art. 2 (1).

(2) FSA regulatory acts may take the form of decisions, orders, regulations, rules and instructions. *(amended by Law no. 148/2015)*

(3) The individual acts of the FSA are authorizations, certificates, opinions and decisions. *(amended by Law no. 10/2015)*

**Art. 7.** - (1) Any natural or legal person has the right to address the competent courts of law if it is considered harmed by the improper application or non-application by the FSA of the provisions of this emergency ordinance.

(2) The FSA is the only authority able to rule on the considerations of opportunity, assessments and qualitative analyzes that underlie the issuance of its acts.

(3) FSA has an active procedural capacity and can intervene in any trial regarding the adopted norms or individual acts issued by it, as well as in any trial against regulated entities or persons who are in a legal relationship with them, either directly or indirectly, when such action is necessary in order to protect the interests of investors, policyholders, beneficiaries of private pension funds and financial stability. *(inserted by GEO no. 94/2013)*

**Art. 7<sup>1</sup>.** - (1) The obligation to maintain professional secrecy cannot be invoked by any natural or legal person related to the non-banking financial market in Romania when FSA is in the exercise of its duties provided by law.

(2) In order to fulfill its fundamental objectives and duties, FSA may exchange both public and confidential and/or classified information with the National Bank of Romania, the

Competition Council, the Ministry of Internal Affairs, the National Office for Prevention and Control of Money Laundering, as well as with other public authorities and institutions.

*(inserted by Law no. 10.*

### CHAPTER III Management, organization and operation of FSA

**Art. 8.** - (1) The FSA is governed by a Board formed of 9 members, of which one is a Chairperson, one is a First Vice-Chairperson and 3 are Vice-Chairpersons, who are executive members. Each of the 3 Vice-Chairperson has specific duties corresponding to one of the 3 sectors of financial supervision. The decision of the Romanian Parliament to appoint them establishes the financial supervision sector for which they are appointed. The other 4 members are non-executive members. *(amended by GEO no. 94/2013)*

(2) The members of the FSA Board are appointed by Parliament, in the joint sitting of the two Chambers, at the joint proposal of the Budget, Finance, Banking Activity and Capital Markets 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 in the Chamber of Deputies.

(3) The joint committees provided in par. (2) carry out the selection of the candidates to be appointed members of the FSA Board *(amended by GEO no. 94/2013)*

(4) The appointment of the members of the FSA Board is made for a period of 5 years, with the possibility of renewing the mandate, in compliance with the provisions of par. (2) and (3) et art. 9.

(5) Appointment of the members of the FSA Board, within the number provided in par. (1), shall be made by the Parliament, under the conditions of this emergency ordinance, until 30 June 2013. *(inserted by GEO no. 55/2013)*

**Art. 9.** - (1) The members of the FSA Board must meet the following conditions:

a) to be Romanian citizens with the domicile in Romania, with a good reputation and professional training and appropriate professional experience in areas in which FSA has competencies;

a<sup>1</sup>) to have long-term higher education, graduated with a bachelor's degree; *(amended by GEO no. 94/2013)*

a<sup>2</sup>) to have a professional experience in the financial field, of credit institutions and / or of non-banking financial institutions of at least 8 years from the date of graduation of the studies provided in sub-paragraph a<sup>1</sup>); *(inserted by GEO no. 94/2013 and amended by Law no. 148/2015)*

b) not to be senators, deputies or members of any political party or political organization during the term of office;

c) not to exercise another profession or not to hold a public or private position, except for the possibility of carrying out didactic activities and scientific research, avoiding the conflict of interests;

d) not to be members of the boards of directors, supervisory boards, directorates or boards of auditors, not to hold the position of director or other positions in the following entities:

1. entities focusing on the activity of intermediaries in financial instruments 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 the Law no. 411/2004, republished, with subsequent amendments and supplements;

5. financial investment undertakings;

d<sup>1</sup>) not to hold, them and/or their family members up to the third degree, including, directly or indirectly, a participation of over 5% of the capital of the entities provided in subparagraph d) or from the voting rights or a participation that would allow the exercise of a significant influence on the decision-making in the general assembly or in their board of directors;

e) not to have been part of the management of a company which, in any form, has ceased its activity without respecting its obligations to third parties or which has been declared bankrupt as a result of the period in which the person has exercised the mandate and for which they are liable;

f) to have a clean criminal and tax record;

g) not to be spouses or relatives or relatives up to the third degree with the President of Romania, with the members of the permanent bureaus of the two Chambers of the Parliament, of the Government or of the Board of Directors of the National Bank of Romania. (*amended by GEO no. 94/2013*)

(2) Verification of the fulfillment of the conditions provided in par. (1) is made by the 4 commissions provided in art. 8 (2). (*inserted by GEO no. 94/2013*)

**Art. 10.** - (1) A member of the FSA Board is revoked according to the procedure provided in art. 8 (2), when said member no longer meets the conditions laid down in art.9.

(2) No member of the FSA Board may be revoked for other reasons or by another procedure than the one provided in par. (1)

**Art. 11.** - In case of the permanent impossibility of exercising the mandate by one of the members of the Board, as well as in case of resignation of a member, at the notification of FSA, the parliamentary commissions provided in art. 8 (2) propose to Parliament, within 30 days, the appointment of another person. Any circumstance that creates an unavailability with a duration of more than 90 consecutive days is considered a permanent impossibility to exercise the mandate.

**Art. 12.** - (1) Membership of the FSA Board ceases in the following situations:

a) upon expiry of the term for which he was appointed, in compliance with the provisions of par. (2)

b) by resignation;

c) by revocation by the Parliament according to the provisions art. 10;

d) by replacement, according to art. 11;

e) by death.

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

(3) In the cases provided in par. (1) subparagraphs b) -d), the appointment of a new person is made for the remaining term of office.

(4) For the elimination of any incompatibilities resulting from the provisions of art. 9, the members of the FSA Board have a period of 30 days from the date of appointment. (*amended by Law no. 148/2015*)

(5) The members of the FSA Board have the obligation to immediately notify, in writing, the FSA and the Parliament of the occurrence of any of the situations of incompatibility provided for in art. 9 . Pending the decision of the Parliament to appoint a new person, the term of office of the member of the Board shall be suspended as of right.

**Art. 13.** - (1) The Chairperson represents FSA as an autonomous administrative authority, as a legal person under public law and in common law relations and is an authorizing officer.

(2) In case of temporary impossibility to exercise the prerogatives of the Chairperson, the representation of FSA belongs to the First Vice-Chairperson.

**Art. 14.** - (1) The convening of the FSA Board is done by the Chairperson and/or First Vice-Chairperson, whenever necessary or at the request of at least 4 of its members. *(amended by Law no. 148/2015)*

(2) The FSA Board deliberates validly in the presence of at least half plus one of its members, including the Chairman or, in his or her absence, the First Vice-Chairman.

(3) Decisions are adopted by a vote of 2/3 of the members present.

(4) The adopted decision is binding for all members of the FSA Board, the separate opinion of the members who voted against or abstained from voting being recorded in the minutes of the respective meeting.

(5) The members of the FSA Board exercise their mandate according to the law. They shall be jointly and severally liable for their activity, unless they have voted against a decision and recorded a separate opinion in the minutes of the meeting. The members of the FSA Board are obliged to sign the documents deriving from the adopted decision, if this duty belongs to them according to the law and the internal regulations of the FSA, even if they voted against the adopted decision. *(amended by Law no. 147/2021)*

(6) The court charges incurred by the judicial proceedings initiated against the members of the FSA Board or against its personnel, charged with exercising supervisory and control duties, shall be borne by the FSA if the judicial authorities find that these persons have fulfilled or omitted, in good faith and without negligence, any act or fact in connection with the exercise, in accordance with the law, of the powers of supervision and control. *(inserted by Law no. 147/2021)*

**Art. 15.** - (1) The organizational structure, the number of positions, the duties of management and execution of the personnel, the criteria of hiring and selection of the personnel to ensure the development in good conditions of the activity are established by the FSA Board.

(2) The FSA Board approves the organizational chart, the organization and operation regulation and the internal regulations and establishes by its own regulation the regime and principles regarding the remuneration of the members of the Board and of the employed personnel. On this basis, the Board decides on the remuneration of its members and personnel, taking into account the level of remuneration granted to similar positions and functions in the financial market.

(3) The level of remuneration of the members of the FSA Board, established under the conditions of par. (2), may not exceed the level of remuneration of the members of the Board of Directors of the National Bank of Romania. *(inserted by GEO no. 55/2013)*

**Art. 16.** - (1) FSA is liable within the limits its patrimony.

(2) The joint committees of the Senate and the Chamber of Deputies provided in art. 8 (2) may at any time order the verification of FSA activities *(inserted by Law no. 148/2015)*

**Art. 17.** - (1) On behalf of the FSA, the Chairperson of the Board shall submit to Parliament, by 30 June of the following year, the annual report of the FSA, which shall include its activities, annual financial statements and audit report, which shall be debated without being submitted to vote in the joint sitting of the two Chambers of Parliament.

(2) The report provided in par. (1) shall be published by the FSA, after its presentation in the Parliament, in the Official Gazette of Romania, Part II. *(amended by Law no. 148/2015)*

(3) *repealed by Law no. 10/2015*

**Art. 17<sup>1</sup>.** - (1) FSA employees must meet the following conditions:

a) not to be members of the boards of directors, supervisory boards, directorates or audit committees, not to hold the position of director or other positions and not to provide services to/for the following entities, except for the Insurance Management Institute:

1. entities that target the activity of intermediaries in financial instruments and undertakings of collective investment;

2. investment management undertakings;

3. entities covering the business of insurers, reinsurers, insurance and reinsurance intermediaries and other related activities;

4. entities targeting the private pension system, according to the Law no. 411/2004 on privately managed pension funds, republished, with subsequent amendments and supplements, and of the Law no. 204/2006 on voluntary pensions, with subsequent amendments and supplements;

5. financial investment companies.

b) not to hold, they and/or their family members up to the second degree including, directly or indirectly, a participation of over 5% of the capital of the entities provided in subparagraph a) or from the voting rights or a participation that would allow the exercise of a significant influence on the decision-making in the general assembly or in their board of directors. In this sense, at the FSA level, a register of personal transactions will be established in which the FSA employees have the obligation to register the participations held;

c) not to hold management positions in the structures or governing bodies, elected or appointed, of political parties, defined according to their statute, of organizations to which the same legal regime applies as of political parties or of foundations or associations operating alongside political parties.

(2) The persons who are in one of the situations provided in par. (1) subparagraphs a) and b) have the obligation to choose, within 30 days from the occurrence of the situation of incompatibility, among the qualities that generated its occurrence.

*(inserted by GEO no. 94/2013)*

**Art. 17<sup>2</sup>.** - (1) FSA employees may apply for holding an office in an executive, legislative or judicial authority.

(2) During the period in which an FSA employee applies for the exercise of a position within an executive, legislative or judicial authority, the individual employment contract may be suspended, at his or her request, in accordance with the law.

*(inserted by GEO no. 94/2013)*

**Art. 17<sup>3</sup>.** - (1) The members of the FSA Board, as well as its personnel, are obliged to maintain the strict confidentiality of any sensitive information, provided in the FSA's own regulations, obtained during or as a result of exercising the function or prerogatives provided in this emergency ordinance.

(2) The obligation to maintain the confidentiality of the information provided in par. (1) for the members of the FSA Board and its personnel subsist regardless of whether or not the person still holds the status of a member of the FSA Board or that of an employee.

*(inserted by Law no. 147/2021)*

## CHAPTER IV FSA budget

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

(2) FSA revenues come from the sources provided for in:

a) art. 13 and 17 (3) of the Statute of the National Securities Commission, approved by Government Emergency Ordinance no. 25/2002, approved with amendments and supplements by Law no. 514/2002, as subsequently amended and supplemented;

b) art. 10 (1) of Law no. 26/2000, as subsequently amended and supplemented;

c) art. 17 (1) and art. 35 of the Government Emergency Ordinance no. 50/2005, approved with amendments and supplements by Law no. 313/2005, as subsequently amended and supplemented.

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

(3) The expenditures are established by the annual budget of the FSA, in accordance with its objectives and duties.

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

(2) The surplus from the income and expenditure budget recorded at the end of the year is carried over to the following year and can be used to finance any gaps recorded by the FSA (*amended by GEO no. 94/2013*)

**Art. 20.** - The liquid assets of the FSA, in order to capitalize them, can be placed, in market conditions and with the avoidance of conflict of interest, in instruments bearing interest at credit institutions, in government securities or local public administration securities, as well as in other low-risk instruments.

**Art. 21.** - FSA may purchase, lease or own or use the real estate required for the activity from the financing sources provided in art. 18(2).

**Art. 21<sup>1</sup>.** - The execution of the income and expenditure budget of the FSA is subject to the control of the Romanian Court of Accounts.

(*inserted by GEO no. 94/2013 and amended by Law no. 148/2015*)

#### CHAPTER IV<sup>1</sup> Sanctioning regime

(*inserted by Law no. 147/2021*)

**Art. 21<sup>2</sup>.** - (1) Violation of the provisions of this emergency ordinance, of the legislation regulating the activity of entities regulated and/or supervised by the FSA, as well as of the regulations and individual acts issued in their application is found by the FSA, as a result of the exercise of control by specialized departments permanently, periodically or unexpectedly.

(<sup>1</sup>) For the purposes of this emergency ordinance, *permanent control* means the supervisory activity carried out continuously by the FSA, as defined in the legislation specific to the three sectors of activity. (*inserted by Law no. 147/2021*)

(2) The carrying out of the periodic inspection is decided by the FSA Board

(3) Carrying out the unannounced inspection is decided by the Chairperson of FSA, who can initiate the inspection ex officio, or at the request of any of the 3 Vice-Chairpersons provided in art. 8 (1), with the prior information of the Chairperson.

(4) The FSA Board may apply sanctions according to the special legislation in the field and/or may order measures in order to prevent or remedy any situations of non-compliance with the legal provisions found during the control.

(5) Following the application of the sanctions and/or the measures provided in par. (4) is made by the specialized departments within FSA.

(6) Following the periodic or unannounced inspection, a report shall be drawn up.  
(7) The controlled entity has the right to submit objections to the minutes provided in par. (6) within the terms established by FSA regulations.

(7<sup>1</sup>) If the act of supervision contains elements which have not been previously considered by the Authority, in connection with a period which has already been subject to inspection by the FSA, the FSA Board may approve a new inspection, once, for the same period, at the same entity. *(inserted by Law no. 147/2021)*

(8) The procedure regarding the control activity carried out by the FSA will be established by the FSA by regulation.

*(inserted by GEO no. 94/2013)*

**Art. 21<sup>2a</sup>.** - (1) The entities provided in art.21<sup>2</sup> (1) are obliged:

a) to transmit and/or make available to the FSA the acts, documents and information requested, within the deadlines and in the structure established by the FSA, so as not to jeopardize the development and completion of the supervision and control activity and to ensure the access of the FSA representatives to their premises;

b) to provide complete documents and real information, which do not mislead the FSA, so as not to jeopardize the development and completion of the supervisory and control activity;

c) to comply with the measures ordered by FSA through authorization, supervision and control acts.

(2) Non-compliance with the obligations provided in par. (1) shall be sanctioned by the FSA according to the special legislation applicable to the entities provided in art. 21<sup>2</sup> (1).

(3) The repeated violation of the obligations provided in par. (1) subparagraphs b) and c) by the entities provided in art. 21<sup>2</sup> (1), after the application by FSA of the civil sanctions provided in the special applicable legislation or of those provided in art. 21<sup>5</sup> for these deeds, it constitutes an offence and is punishable by imprisonment from 3 months to one year or by a fine.

(4) If the deed provided in par. (3) was committed through fault, the penalty is a fine.

(5) The provisions of par. (3) shall not apply in the case of decisions sanctioning the facts provided in par. (1) issued by the FSA, abolished by the competent courts.

*(inserted by Law no. 147/2021)*

**Art. 21<sup>3</sup>.** - The decisions and any other administrative acts issued by the FSA are appealed according to the Law on Administrative Litigation no. 554/2004, with subsequent amendments and supplements.

*(inserted by GEO no. 94/2013)*

**Art. 21<sup>4</sup>.** - The contraventions provided in the legislation regulating the activity of FSA are prescribed within 3 years from the date of committing the deed.

*(inserted by GEO no. 94/2013)*

**Art. 21<sup>5</sup>** - (1) For non-compliance with the provisions of this emergency ordinance, as well as the regulations and decisions of the FSA Board, in cases that do not fall under the legislation governing the activity of the entities provided in 21<sup>2</sup> (1), the FSA Board, in accordance with the approved internal regulations, may apply the following sanctions:

a) written warning;

b) fine for natural persons between Lei 1,000 and the equivalent in Lei of 25% of the annual net income of the natural person made with the employer or fine for legal entities between Lei 10,000 and the equivalent in Lei of 1% of the annual turnover of the legal person. The fines collected are made revenue to the state budget;

c) partial or total suspension, for a period of up to 90 days, of the authorization granted by the FSA;

d) withdrawal of the authorization granted by FSA  
(2) The decisions adopted by FSA regarding the natural and legal persons according to the provisions of par. (1) may be appealed under the conditions provided in art. 21<sup>3</sup>.  
*(inserted by Law no. 147/2021)*

## CHAPTER V Transitory and final provisions

**Art. 22.** - (1) FSA takes over from the National Securities Commission, from the Insurance Supervisory Commission and from the Private Pension System Supervisory Commission, based on handover-takeover protocols concluded with each of them, within 15 days from the date of appointment of the members of the FSA Board, but not later than 30 April 2013, the cash available in the accounts and the patrimony established on the basis of the financial statements prepared according to art. 28 (1) of the Accounting Law no. 82/1991, republished, with the subsequent amendments and supplements, as well as the other rights and obligations deriving from them.

(2) The protocols provided in par. (1) shall enter into force on the date of signature of the last protocol.

**Art. 23.** - FSA takes over the number of positions and the staff of the National Securities Commission, the Insurance Supervisory Commission and the Private Pension System Supervisory Commission. *(amended by Law no. 260/2013)*

**Art. 24.** - (1) FSA exercises its prerogatives provided in art. 2 (1) starting with the date of concluding the handover-takeover protocol provided in art. 22 (1), but not later than 30 April 2013. At the same time, the National Securities Commission, the Insurance Supervisory Commission and the Supervisory Commission of the Private Pension System are abolished and the mandates of the members of these authorities, respectively of the members of their management, cease by right.

(1<sup>1</sup>) By derogation from the provisions of the Law no. 571/2003 on tax code, with subsequent amendments and supplements, the income tax rate is 85% for income representing salaries/allowances/compensatory amounts granted, in accordance with the law, on the occasion of termination of employment contract, employment relationship or mandate of employees with management positions or persons who have been appointed as a member within the FSA Board or within the authorities that are reorganized according to art. 1 (2). *(inserted by Law no. 260/2013)*

(2) Until the date of signing the handover-takeover protocol, under the conditions of par. (1), the National Securities Commission, the Insurance Supervisory Commission and the Private Pension System Supervisory Commission continue their activity according to the legislation in force.

**Art. 25.** - (1) FSA is substituted in all rights and obligations arising from all normative acts, contracts, conventions, arrangements, protocols, memoranda, agreements and the like, as well as in all disputes in which the National Securities Commission, the Insurance Supervisory Commission and the Private Pension System Supervisory Commission are signatory parties.

(2) Contracts, conventions, arrangements, protocols, memoranda, agreements and the like concluded by the National Securities Commission, the Insurance Supervisory Commission and the Private Pension System Supervisory Commission, in execution at the date of adoption of this emergency ordinance, maintain their validity and are taken over by FSA.

(3) The Investor Compensation Fund - SA, the Policyholders' Guarantee Fund and the Private Pension System Rights Guarantee Fund will be administered and used according to the specific destinations of each of these funds.

**Art. 26.** - In the normative acts, the phrases "National Securities Commission", "Insurance Supervisory Commission" and "Private Pension System Supervisory Commission" shall be replaced by the phrase "Financial Supervisory Authority".

**Art. 27.** - The acts issued by the authorities that are abolished according to art. 24 (1), including the regulations adopted by them in application of the law, shall remain valid.

**Art. 28.** - The provisions hereof shall be supplemented with the legislation regulating the activity of the authorities which shall be abolished, as the case may be, insofar as they do not contravene the provisions of this emergency ordinance.

**Art. 29.** - Provisions of Articles 23, 25, 26 and 28 shall apply from the date provided in art. 22 (1).

\*

This emergency ordinance transposes the provisions Art. 4 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/CE on 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 European, series L, no. 331 of 15 December 2010. (*inserted by GEO no. 78/2013*)

PRIME MINISTER  
**VICTOR-VIOREL PONTA**

Countersign:

Deputy Prime Minister, Minister of Public Finance

**Florin Georgescu**

Minister of European Affairs

**Leonard Orban**

Bucharest, 18 December 2012.  
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