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|  | **Rule no. 43/2020 amending and supplementing Rule no. 33/2017 of the Financial Supervisory Authority on**  **archiving organization to authorized/approved entities, regulated and supervised by the Financial Supervisory Authority**  *in force as at 17 December 2020*  *Published in the Official Journal Part I, no. 1251 dated 17 December 2020. Applicable as at* [*02 June 2021*](dataIncarcare:)*.* |  |

*Having regard to the provisions of Article 2* [*par. (1)*](act:336700%2064249477)*, Article 3 par. (1)* [*sub-par. b)*](act:336700%2063397324)*,* [*Article 5*](act:336700%2063397330)*, corroborated with the provisions of Article 6* [*par. (1)*](act:336700%2064249489) *and* [*(2)*](act:336700%2079897525) *of the Government Emergency Ordinance no. 93/2012 on the establishment, organization and operation of the Financial Supervisory Authority, as amended and supplemented by Law no.* [*113/2013*](act:349508%200)*, as subsequently amended and supplemented,*

*In line with the provisions of:*

**-** [Articles 54](act:2867288%20261806206), [55](act:2867288%20261806208), Article 63 [par. (6)](act:2867288%20261806268) and [(7)](act:2867288%20261806269) and Article 64 [par. (7)](act:2867288%20261806290) of Law no. nr. 126/2018 on the financial instruments’ markets, as subsequently amended and supplemented;

**-** Article 5 par. (3) sub-par. b) [point (ii)](act:321774%20194363786), Article 6 sub-par. b) [pct. 8](act:321774%2061502244) and [Article 28](act:321774%2061502430) of Government Emergency Ordinance no. 32/2012 on the undertakings for collective investment in transferable securities and investment management companies, as well as amending and supplementing Law no[. 297/2004](act:56842%200) on capital market, as amended and supplemented by Law no[. 10/2015](act:417430%200), as subsequently amended and supplemented;

**-** Article 5 par. (3) sub-par. a) [point (ix)](act:641053%2077568689) and par. (5) sub-par. b) [point (ii)](act:641053%2077568697) of Law no. 74/2015 on alternative investment funds managers, as subsequently amended and supplemented;

**-** Article 57 par. (1) [sub-par. k)](act:114473%2031874845), Article 66 [par. (2)](act:114473%2031874899) and Article 70 [sub-par. h)](act:114473%2031874926) of Law no. 411/2004 on privately administered pension funds, republished, as subsequently amended and supplemented;

**-** Article 15 par. (1) [sub-par. l)](act:86391%2013874806) of Law no. 204/2006 on optional pensions;

**-** Article 34 par. (1) [sub-par. n)](act:3568676%20307724203) and Article 38 par. (1) [sub-par. g)](act:3568676%20307724230) of Law no. 1/2020 on occupational pensions, as subsequently supplemented;

**-** Article 36 par. (2) [sub-par. g)](act:3052032%20271355589) of Law no. 236/2018 on insurance distribution, as subsequently amended;

**-** Article 173 par. (1) [sub-par. t)](act:818944%2084243151) and Article 179 [par. (4)](act:818944%2084243170) of Law no. 237/2015 on

the authorization and supervision of the insurance and reinsurance activity, as subsequently amended and supplemented;

*Further to deliberations held in the meeting of the Financial Supervisory Authority’s Board dated 25 November 2020,*

    The Financial Supervisory Authority hereby issues this rule.

**Article I. -**   Rule no [. 33/2017](act:2635721%200) of the Financial Supervisory Authority on archiving organization to authorized/ approved entities, regulated and supervised by the Financial Supervisory Authority, published in the Official Journal of Romania, Part I, no. 998 dated 15 December 2017, as subsequently amended, is hereby amended and supplemented as follows:

1. Preamble is amended to read as follows:

   " Based on the provision of Article 2 [par. (1)](act:336700%2064249477), Article 3 par. (1) [sub-par. b)](act:336700%2063397324), [Article 5](act:336700%2063397330), corroborated with the provisions of Article 6 [par. (1)](act:336700%2064249489) and [(2)](act:336700%2079897525) of the Government Emergency Ordinance no. 93/2012 on the establishment, organization and operation of the Financial Supervisory Authority, as approved by amendments and supplements by Law no [. 113/2013](act:349508%200), as subsequently amended and supplemented,

    In line with the provisions of:

**-** [Article 54](act:2867288%20261806206), [55](act:2867288%20261806208), Article 63 [par. (6)](act:2867288%20261806268) and [(7)](act:2867288%20261806269) and Article 64 [par. (7)](act:2867288%20261806290) of Law no. 126/2018 on the financial instruments’ markets, as subsequently amended and supplemented;

**-** Article 5 par. (3) [sub-par. b)](act:321774%20194363784) point (ii), Article 6 sub-par. b) [point 8](act:321774%2061502244) and [Article 28](act:321774%2061502430) of the Government Emergency Ordinance no. 32/2012 on the undertakings for collective investment in transferable securities and investment management companies, as well as amending and supplementing Law no[. 297/2004](act:56842%200) on capital market, as amended and supplemented by Law no[. 10/2015](act:417430%200), as subsequently amended and supplemented;

**-** Article 5 par. (3) sub-par. a) [point (ix)](act:641053%2077568689) and par. (5) sub-par. b) [point (ii)](act:641053%2077568697) of Law no.74/2015 on alternative investment funds managers, as subsequently amended and supplemented;

**-** Article 57 par. (1) [sub-par. k)](act:114473%2031874845), Article 66 [par. (2)](act:114473%2031874899) and Article 70 [sub-par. h)](act:114473%2031874926) of Law no. 411/2004 on privately administered pension funds, republished, as subsequently amended and supplemented;

**-** Article 15 par. (1) [sub-par. l)](act:86391%2013874806) of Law no. 204/2006 on optional pensions, as subsequently amended and supplemented;

**-** Article 34 par. (1) [sub-par. n)](act:3568676%20307724203) and Article 38 par. (1) [sub-par. g)](act:3568676%20307724230) of Law no. 1/2020 on occupational pensions, as subsequently supplemented;

**-** Article 36 par. (2) [sub-par. g)](act:3052032%20271355589) of Law no. 236/2018 on insurance distribution, as subsequently amended;

**-** Article 173 par. (1) [sub-par. t)](act:818944%2084243151) and Article 179 [par. (4)](act:818944%2084243170) of Law no. 237/2015 on the authorization and supervision of the insurance and reinsurance activities, as subsequently amended and supplemented”.

**2.** Under Article 2, [sub-paragraph d)](act:2635721%20249701983) shall be amended to read as follows:

   " **d)** market operators;".

**3.** Under Article 2, [sub-paragraph f)](act:2635721%20249701985) shall be repealed.

**4.** Under Article 2, [sub-paragraph j)](act:2635721%20249701989) shall be amended to read as follows:

   " **j)** insurance and/ or reinsurance distributors;".

**5.** [Article 3](act:2635721%20317741998) shall be amended to read as follows:

   " **Article 3. -**   Terms and expressions used in this rule shall have the meanings laid down by the legislation on National Archives and the legislation on electronic archiving, Law no[. 297/2004](act:56842%200) on capital market, as subsequently amended and supplemented, Government Emergency Ordinance no[. 32/2012](act:321774%200) on the undertakings for collective investment in transferable securities and investment management companies, as well as amending and supplementing Law no[. 297/2004](act:56842%200) on capital market, as amended and supplemented by Law no[. 10/2015](act:417430%200), as subsequently amended and supplemented, Law no.[. 411/2004](act:114473%200) on privately-managed pension funds, as subsequently amended and supplemented, Law no.  [204/2006](act:86391%200) on optional pensions, as subsequently amended and supplemented, Law no[. 1/2020](act:3568676%200) on occupational pensions, as subsequently amended and supplemented, Law no [. 236/2018](act:3052032%200) on insurance distribution, as subsequently amended and supplemented, Law no [. 74/2015](act:641053%200) on alternative investment funds managers, as subsequently amended and supplemented, Law no[. 237/2015](act:818944%200) on the authorization and supervision of the insurance and reinsurance activities, as subsequently amended and supplemented, Law no. [126/2018](act:2867288%200) on Financial instruments markets, as subsequently amended and supplemented and Law no. [no. 243/2019](act:3562499%200) on regulating alternative investments funds and amending and supplementing certain legal texts”.

**6.** Under Article 5, [paragraph (3)](act:2635721%20249701998) shall be repealed.

**7.** [Article 6](act:2635721%20249702001) shall be amended to read as follows:

   " **Article 6. -** (**1)** Entities must record and keep records of all documents certifying to the activities they are pursuing, which entered/exited, including of those prepared for internal use, whose keeping is compulsory as per the legislation in the matter of archiving and to ensure their authenticity and integrity, as well as to comply with the regulations in force concerning the preservation, access and protection of private information.

**(2)** In relation to the documents whose keeping is compulsory in accordance with the Archiving list, entities must issue an international regulation to describe the types of mandatory documents”.

**8.** Under Article 7, [paragraph (1)](act:2635721%20249702004) shall be amended to read as follows:

   " **Article 7.** (**1)** Document registration is made in a ledger where all entries/ exits are recorded, as per set out by Article 6, in chronological order as they enter/exit the entity, by assigning a registration number to enable document’s unique identification, without the registration numbers assigned repeating themselves”.

**9.** Under Article 8, the introductory part shall be amended to read as follows:

   " **Article 8. -**   To the extent the specific legislation applicable to entities set out under Article 2 is not harmed, the register showing entries/ exits of documents set out by Article 7 par. (1) shall comprise at least the following items:"

**10.** [Article 11](act:2635721%20249702025) shall be amended to read as follows:

   " **Article 11. -**   Entities must record and keep records of all documents prepared electronically which enter/exit the entities and internal use documents whose keeping is mandatory as per the legislation on electronic archiving”.

**11.** [Article 13](act:2635721%20249702029) shall be amended to read as follows:

   " **Article 13. -**   In accordance with the provisions of legislation on electronic archiving, archiving processing operations of documents electronically shall be carried out by complying with the legislation on electronic archiving, as well as of the regulations in force on the preservation, access and protection of private information”.

**12.** [Article 15](act:2635721%20249702033) shall be repealed.

**13.** [Article 22](act:2635721%20249702052) shall be amended to read as follows:

   " **Article 22. -**   Until the documents laid down by Article 19 are surrendered, entities must prepare a record thereof, to be permanently updated”.

**14.** [Article 23](act:2635721%20249702054) shall be amended to read as follows:

   " **Article 23. -**   Documents taken over in accordance with Article 19 shall be organized in the archive depository by years and within the year, by periods of retention or departments and, within the department, by years and periods of retention”.

**15.** [Article 24](act:2635721%20249702056) shall be amended to read as follows:

   " **Article 24. -**   Entities must have suitable internal procedures in place to contain references to at least the following items:

1. Archival classification and periods of retention;
2. Manner of archive set up and management;

**b)** manner of access to the archive depository to be allowed solely to persons in charge of the archive;

1. Access level of own staff to the documents in the archive and its responsibilities toward the documents picked-up;

**d)** how are the documents in the archive released to its own staff and to other State authorities/ institutions;

**e)** manner in which documents issued temporarily are delivered back and re-entered in the archive”.

**16.** Under Article 25, a new paragraph is entered after [paragraph (1)](act:2635721%20249702062) , paragraph 2, to read as follows:

   " **(2)** Upon A.S.F. ‘s request, entities must enable access to A.S.F. temporarily to documents archived electronically, giving right to view, reproduce and store the respective documents, via an employee with the entity appointed to this effect, in order that A.S.F. may exercise supervision and control duties, by complying with the entities’ security policies and of the legislation on the control activity carried out by A.S.F."

**17.** [Articles 29](act:2635721%20249702073), [30](act:2635721%20249702082) and [31](act:2635721%20249702084) shall be repealed.

**18.** [Article 32](act:2635721%20249702090) shall be amended to read as follows:

   " **Article 32. -** (**1)** Entities laid down by Article 2, sub-par. i) must keep in their own archives for a term of 10 years as of the documents’ creation date the following documents concerning the activity carried out in the field of insurance and/or reinsurance:

**a)** claim files, along with the technical and accounting records related thereto;

**b)** annual report prepared by the statutory auditor;

1. Special register of assets covering the gross technical reserves;
2. Financial reporting sent to A.S.F.;

**d)** annual financial statements;

**e)** any other reports set out by the legislation in the field of insurance;

**f)** practical- value documents based on which copies, certificates and excerpts are issued concerning the insured’s individual rights;

**(2)** Entities laid down under Article 2 sub-par. j) must keep, for a term of 10 years as of the document’s creation date, the following documents in their own archives with regard to the activity carried out in the field of insurance/reinsurance.

1. Reports sent to A.S.F. as per the legal provisions in force;
2. Brokering/intermediation mandates or written agreements entered into with own clients;

**b)** all documents provided by the legal provisions, which are issued in the precontractual stage and are sent to clients/prospective clients;

**c)** documents relating to the activity of insurance and/or reinsurance distribution laid down by Article 11 [par. (1)](act:3052032%20271355199), [Article 12](act:3052032%20271355219)-[14](act:3052032%20271355253), [Article 16](act:3052032%20271355310)-[17](act:3052032%20271355320) and [Article 25](act:3052032%20271355379)-[27](act:3052032%20271355411) of Law no. 236/2018 on insurance distribution, as subsequently supplemented, and other documents certifying to the actual conclusion of the insurance/reinsurance contract."

**19.** Under Article 33, [sub-paragraph b)](act:2635721%20249702102) shall be amended to read as follows:

   " **b)** ensure storage/archiving, integrity and subsequent accessing of telephone conversations”.

**20.** Under Article 34, [paragraph (1)](act:2635721%20249702105) shall be repealed.

**21.** Under Article 36, the introductory part and sub-paragraph a) shall be amended to read as follows:

   " **Article 36. -**   Entity’s management must make sure that the persons in charge of the archive fulfil the requirements on the records, inventory, selection, keeping, access, integrity and use of documents listed in the archiving classification of the entity and that the following are ensured:

1. Suitable endowment of archive depositories, depending upon the document’s format and support, by adequate means of keeping and protection thereof, as well as by suitable means for their keeping and protecting, flood prevention, as well as specific tracking devices and microclimate insurance and access control in the depository”.

**22.** [Article 38](act:2635721%20249702123) shall be amended to read as follows:

   " **Article 38. -**   This Rule shall be completed by the provisions of the legislation on National Archives and of the legislation on electronic archiving, as well as by Article 2 in the matter of archiving."

**23.** [Article 40](act:2635721%20249702127) shall be repealed.

**24.** [Article 41](act:2635721%20249702129) shall be amended to read as follows:

   " **Article 41. -**   Failure to comply with this rule’s provisions shall be punished as per the specific legislation applicable”.

**Article II. -**   This rule shall be published in the Official Journal of Romania, Part I, and shall enter into force on its publication date.

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|  | Chairman of the Financial Supervisory Authority Nicu Marcu |

    Bucharest, 26 November 2020.

    No. 43.