Romanian Parliament - Law no. 29/2017 of March 24, 2017

Law no. 29/2017

amending and supplementing Government Emergency Ordinance no. 32/2012 regarding undertakings for collective investment in transferable securities and investment management companies, as well as amending and supplementing Law no. 297/2004 on the capital market

In force since April 1, 2017

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The Romanian Parliament adopts this law.

Art. I. - Government Emergency Ordinance no. 32/2012 regarding undertakings for collective investment in transferable securities and investment management companies, as well as amending and supplementing Law no. 297/2004 on the capital market, published in the Official Gazette of Romania, Part I, no. 435 of June 30, 2012, approved with amendments by Law no. 10/2015, as amended, modified and supplemented as follows:

1. Concerning article 1, paragraph (2) is amended to read as follows:

" (2) Financial Supervisory Authority, hereinafter A.S.F. is the competent authority that enforces this emergency ordinance, by exercising the powers and prerogatives established by the Government Emergency Ordinance no. 93/2012 on the establishment, organization and functioning of the Financial Supervisory Authority, approved with amendments and supplements by Law no. 113/2013, as amended and supplemented."

2. Concerning article 3 paragraph (1), after point 26, four new points, points 27-30, with the following content, are inserted:

" 27. governing body - the body with final decision-making authority on an investment management company, investment firm or depositary established under articles of incorporation, in accordance with the Company Law no. 31/1990, republished, as amended and supplemented, which oversees and monitors the leadership decision-making process. If the entities referred to above are managed under a unitary system, the governing body is the board of directors and executives, and if they are administered in two-tier system, the management body is the Board of Supervisors the directorate under Law no. 31/1990, republished, with subsequent amendments;

28. the governing body in its supervisory role - the governing body fulfills its role of supervision and monitoring of the leadership decision-making process and is represented by the Management Board within the integrated system of management and supervisory board within the dual management system;

29. senior management - individuals with actual management responsibilities within an investment management company, depositary or investment firm and who are responsible and accountable to the governing body for the current leadership activity of the respective entities. Senior management is the directors in the unitary management system, and the Directorate, in the dual management system;

30. financial instruments:

a) securities;

b) money market instruments;

c) the equity stake issued by collective investment undertakings;

d) options, futures, swaps, forward contracts on rates and any other derivative contracts relating to securities, currencies, interest rates or efficiency / profitability, allowances or other derivatives, financial indices or financial indicators that can be settled physically or in cash;

e) options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the request of either party, excluding the case of default or other incident that leads to termination;

f) options, futures, swaps, forwards and any other derivative contract relating to commodities that can be settled by physical delivery, provided they are traded on a regulated market, a multilateral trading system, hereinafter SMT, or an organized trading system, hereinafter SOT, except for wholesale energy products traded on an SOT to be settled by physical delivery;

g) options, futures, swaps, forwards and any other derivative contracts relating to commodities that can be settled by physical delivery, not included in the category referred to in lett. f), and having no commercial purposes, which have the characteristics of other financial derivatives;

h) derivatives for credit risk transfer;

i) financial contracts for differences;

j) options, futures, swaps, forward contracts on rates and any other derivative contract relating to climatic variables, freight taxes or inflation rates or other official statistical indicators to be settled in cash or may be settled in cash at the request of one of the parties, excluding the case of default or other incident that leads to termination and any other derivative contract relating to assets, rights, obligations, indices and indicators, not included in this definition that the characteristics of other financial derivative, taking into account, in particular, its trading on a regulated market within an SMT or an SOT;

k) emission certificates as defined in art. 3 lett. b) the Government Decision no. 780/2006 on setting up the trading scheme emission certificates of greenhouse gases, as amended and supplemented."

3. In article 5, paragraphs (2) - (4) are amended to read as follows:

" (2) Besides managing UCITS provided in para. (1) S.A.I. can manage other collective investment undertakings not covered by this emergency ordinance and that S.A.I. is subject to prudential supervision but whose equity stake cannot be marketed in other Member States under this ordinance.

(3) Notwithstanding para. (1), S.A.I. may carry out, in addition to UCITS management activity, the following activities:

a) management of individual portfolios of investments, including those owned by pension funds on a discretionary basis, in accordance with mandates given by investors where such portfolios include one or more financial instruments;

b) related services:

(i) investment advice concerning one or more financial instruments;

(ii) safekeeping and administration in relation to the equity stake of collective investment undertakings.

(4) S.A.I. may be authorized to carry out activities under par. (3) only if it is authorized in advance to carry out the activities referred to in para. (1) and may be authorized to carry out activities under par. (3) lett. b) only if it carries out activities under par. (3) lett. a)."

4. In article 18, after paragraph (2), insert a new paragraph, paragraph (3), to read as follows:

" (3) S.A.I., investment firms and UCITS depositories must establish, implement and maintain effective and transparent procedures regarding reporting by employees of these entities of infringements of the provisions of this emergency ordinance, through a specific, independent and autonomous channel."

5. After Article 34, insert two new articles, articles 341 and 342, to read as follows:

" Art. 341. - (1) S.A.I. implements and enforces remuneration policies and practices that would promote and would be compatible with sound and effective risk management and would not encourage the taking of risks that are incompatible with the risk profiles mentioned in the articles of incorporation of UCITS they manage and does not affect the fulfillment of the S.A.I. obligation to act in the best interests of the equity stake of managed UCITS.

(2) Remuneration policies and practices mentioned fixed and variable components of remunerations and the discretionary benefits such as pensions.

(3) Remuneration policies and practices apply to those categories of staff whose professional activities have a material impact on the risk profile of S.A.I. or of UCITS they manage, including staff of senior management, people responsible for risk management, the leadership positions and any employee receiving total remuneration that falls into the remuneration bracket of staff within the senior management category and the persons responsible for risk management.

(4) A.S.F. issues regulations on remuneration policies and practices applied to persons under par. (3), taking into account the guidelines and recommendations developed by ESMA.

Art. 342. - (1) When establishing and applying the remuneration policies set out in art. 341, S.A.I. observes the following principles in a way and to an extent that is appropriate to their size, their internal organization and the nature, scale and complexity of their activities:

a) the remuneration policy is compatible with sound and effective risk management and promotes management without encouraging risk-taking which does not comply with the risk profiles, rules of funds or, where appropriate, the articles of incorporation of investment firms that S.A.I. is managing;

b) the remuneration policy complies with the business strategy, objectives, values and interests of S.A.I. and UCITS they manage and holders of securities of these UCITS and includes measures to avoid conflicts of interest;

c) the remuneration policy is adopted by the governing body of S.A.I. in its supervisory position, and this body adopts and reviewed at least annually the general principles of the remuneration policy and oversees their implementation;

d) the tasks provided in lett. c) are implemented only by non-executive members of the management body of the S.A.I. or non-executive members of the board, in the case of a unitary governance system, or supervisory board members, in the case of a two-tier governance system, with experience in risk management and remuneration;

e) the implementation of the remuneration policy shall be, at least annually, subject to a central and independent internal review on the compliance with policies and procedures of remuneration adopted by the management body of S.A.I. in its supervisory role;

f) the staff members in leadership positions are compensated in accordance with the objectives relating to their roles, regardless of the results of the fields of activity they control;

g) the remuneration of persons who coordinate the risk management and ensuring compliance / internal control activity is directly overseen by the remuneration committee, where such a committee exists;

h) in the event that the remuneration is dependant on performance, its total amount is calculated based on an assessment in which the combined individual performance and the one of the business unit in question of the S.A.I. or of that UCITS and their risks and overall results of the S.A.I. when assessing individual performance, taking into account certain financial / non-financial quantitative / qualitative criteria;

i) the performance assessment is carried out in a multi-annual framework appropriate to the holding period recommended to investors of UCITS managed by S.A.I. in order to ensure that the assessment process is based on the long-term performance of UCITS and on the risks of their investments and that the actual payment of the remuneration components that are dependent on the performance is carried out over the same period;

j) the guaranteed variable remuneration is exceptional, and it occurs only in the context of hiring new staff and is limited to the first year of employment;

k) the fixed component and the variable one of the total remuneration are properly balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow for a flexible policy on variable remuneration components, that would include the possibility to pay no variable component of the remuneration;

l) the payments related to the early termination of a contract reflect the performance achieved over the period of employment / office and are given in order to not reward the probable performance or failures;

m) the measuring performance used to calculate the variable remuneration components or of sets of variable remuneration components comprises a comprehensive adjustment mechanism that includes all relevant types of current or future risks;

n) depending on the legal structure of the UCITS and its fund rules or, where applicable, the articles of association of the investment firm, a significant percentage, which can not be less than 50%, of any variable remuneration component consists of the equity stake of the UCITS in question or other

equivalent instruments confirming the ownership of such securities or the related benefits of such holdings, unless the assets of the UCITS managed accounts for less than 50% of the total portfolio managed by S.A.I., including individual accounts, while the minimum of 50% does not apply in this case;

o) instruments provided in lett. n) are subject to an appropriate holding policy designed to align incentives with the interests of the S.A.I., the managed UCITS and the holders of equity stake in the respective UCITS. The provisions of lett. n) apply to both the percentage of the variable remuneration component deferred in accordance with lett. p) and the percentage of the variable remuneration component not deferred;

p) in accordance with the conditions provided in lett. n) an o), at least 40% of the variable remuneration component is deferred over a period which is appropriate in terms of the holding period recommended to holders of the equity stake of the UCITS, this period is appropriate to the nature of the risks taken by the UCITS in question;

q) the period provided in lett. p) is of at least 3 years, and the remuneration due in terms of the deferment measures cannot be given more quickly than on a proportional basis, in the case of a variable remuneration component in a particularly high amount, while at least 60% of the amount is deferred;

r) variable remuneration, including the deferred portion, is paid or granted only if it is sustainable according to the financial situation of S.A.I. and if it is justified by the performance of the business unit of the S.A.I., the UCITS and the person in question;

s) the total variable remuneration is significantly reduced if there is a weak or negative performance of the S.A.I. or UCITS concerned, taking into account both the current remuneration and the reductions in the payouts of the amounts previously earned, including through application of the "malus" or clawback arrangements;

ş) the pension policy is compatible with the business strategy, objectives, values and long-term interests of the S.A.I. and the managed UCITS;

t) if the employee voluntarily ceases the contractual relations with the S.A.I. before retirement, discretionary benefits such as pension shall be retained by the S.A.I. for five years in the form of instruments provided in lett. n). If an employee reaches the age of retirement, discretionary benefits such as pension are paid to the employee in the form of instruments provided in lett. n), subject to a retention period of five years;

ţ) the S.A.I. staff declare at their own risk that they are not using personal hedging strategies or insurance related to remuneration or liability in order to undermine the risk alignment effects provided in their remuneration contracts;

u) the variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the compliance with the requirements provided in this emergency ordinance.

(2) At the request of ESMA, A.S.F. shall provide information on remuneration policies and practices provided in art. 341.

(3) The principles provided in para. (1) apply to services of any kind paid by the S.I.A., to all amounts paid directly by the UCITS itself, including performance charges, and all transfers of units or shares of the UCITS, made for the benefit of those categories of staff, including senior management staff, persons in charge of risk management, of the ones with leadership positions and any employee benefiting from a

total remuneration that falls into the same remuneration bracket as senior management and persons in charge of risk management, whose professional activities have a significant impact on their risk profile or the risk profile of the UCITS they manage.

(4) significant S.A.I. in terms of their size or the size of the UCITS they manage, defined according to the regulations issued by A.S.F. pursuant to this ordinance, of the internal organization and the nature, scale and complexity of their activities, necessarily call a remuneration committee. The remuneration committee shall analyze in an independent manner the remuneration policies and practices and the incentives offered by S.A.I., for risk management.

(5) The remuneration committee is responsible for the decisions regarding remuneration, including those that have implications for the risks and risk management of the S.A.I. or of the UCITS in question, which must be adopted by the governing body in its supervisory role.

(6) The remuneration committee consists of members of the governing body who do not hold any executive positions in the S.A.I. in question. One of the members of the governing body serves as chair of the remuneration committee.

(7) the preparation of its decisions, the remuneration committee shall take into account the long-term interests of the holders of equity securities of the UCITS and other stakeholders, and public interest."

6. Article 52 is amended to read as follows:

" Art. 52. - (1) The assets of a UCITS authorized by the A.S.F. are entrusted for safe keeping on the basis of a written contract, a single depositary.

(2) The contract referred to in para. (1) governs, inter alia, the flow of information deemed necessary in order to allow the depositary to perform his duties for the UCITS for which he was appointed as depositary, as provided for in this emergency ordinance, the regulations issued by the A.S.F. in its application and in the Delegated Regulation (EU) 2016/438 of the Commission of December 17, 2015 to supplement Directive 2009/65 / EC of the European Parliament and of the Council concerning the obligations of the depositaries, hereinafter referred to as Delegated Regulation (EU) 2016/438.

(3) The depositary has to:

a) to ensure that the sale, issue, repurchase or cancellation of equity securities are carried out by the S.A.I. or another entity on behalf of the UCITS according to this emergency ordinance, the A.S.F. regulations and the fund rules or, where applicable, the articles of incorporation of the investment firm;

b) to ensure that the value of the equity stake is calculated according to the rules of the fund or, where applicable, the articles of incorporation of the investment firm and the provisions of this emergency ordinance;

c) to carry out the instructions of the S.A.I. or investment firms, unless they are contrary to the legislation in force or the fund rules or, where applicable, the articles of incorporation of the investment firm;

d) to ensure that, as regards transactions that deal with the UCITS assets, any amount is paid within the prescribed time;

e) to ensure that the UCITS revenues are administered and calculated in accordance with the legislation in force, the A.S.F. regulations and the fund rules or, where applicable, the articles of incorporation of the investment firm.

(4) The depositary shall ensure that the cash flows of the UCITS are properly monitored and, in particular, all payments made by or on behalf of investors have been received upon the subscription of an equity stake of the UCITS and all the UCITS cash was registered in cash accounts that:

a) are opened in the name of the UCITS or of the S.A.I. acting on behalf of the UCITS or of the depositary acting on behalf of the UCITS;

b) are opened at a central bank, a credit institution authorized under Community legislation or a bank authorized in a third country and are administered in accordance with the principles provided in the regulations issued by the A.S.F. on the obligation of safekeeping the clients' rights in relation to financial instruments and funds belonging to them.

(5) If the cash accounts are opened on behalf of the depositary acting on behalf of the UCITS, in these accounts, the cash of the entity referred to in para. (4) lett. b) and the depositary's own cash are not recorded.

(6) the assets of the UCITS shall be entrusted to a depositary for safekeeping as follows:

a) for the financial instruments that can be held in custody, the depositary:

1. keeps in his custody all financial instruments that can be registered in a financial instruments account opened in their books and all financial instruments that can be physically delivered;

2. ensures that all financial instruments that can be registered in a financial instruments account opened in their registries are recorded in separate accounts, opened on behalf of the UCITS or the S.A.I. acting on behalf of the UCITS, so they can be clearly identified at any time as belonging to the UCITS;

b) for other assets, the depositary:

1. checks the ownership of the UCITS or S.A.I. acting on behalf of UCITS on those assets, analyzing whether UCITS or the S.A.I. acting on behalf of UCITS is the owner of the property, based on the information or documents provided by the UCITS or the management company and, if available, external evidence;

2. shall keep a record of the assets for which he is convinced that UCITS site or S.A.I. acting on behalf of the UCITS is the owner of the property and shall update this record.

(7) The Depositary shall present, at least on a monthly basis, to the S.A.I. or to the investment firm, a comprehensive inventory of all UCITS assets.

(8) The assets held in custody by the depositary are not reused by the depositary himself or by a third party to whom the duty of custody was delegated. Reuse includes all transactions in assets held in custody, including, but not limited to, transfer, pledge, sales and loans.

(9) The assets held in custody by the depositary can be reused only if:

a) the reuse of assets is made on behalf of UCITS;

b) the depositary executes the instructions of S.A.I. on behalf of the UCITS;

c) the reuse is made for the benefit of UCITS and in the best interests of the holders of equity stake; and

d) the transaction is covered by high quality and liquid securities received by the UCITS under an agreement for transfer of ownership. The market value of securities at any time amounts to at least the market value of the reused assets, plus a premium.

(10) In the event of the insolvency of a depositary and / or a third party entity located in a Member State to which the custody of assets of UCITS was delegated, assets of the UCITS held in custody at the respective depositary / third entity can not be used for distribution among the creditors of the depositary and / or third party entity, cannot be subject to foreclosure proceedings initiated by creditors of the depositary, can not be seized or garnisheed by them.

(11) The depositary has its registered office or his residence in the Member State of origin of the UCITS."

7. After article 52, a new article, article 521, is inserted to read as follows:

" Art. 521. - (1) The depositary may not delegate to third party entities the duties provided in art. 52 para. (3)-(5).

(2) The depositary may delegate to third party entities the duties provided in art. 52 para. (6), but only provided that:

a) the tasks should not to be delegated with the intention of circumventing the obligations of the depositary;

b) the depositary should be able to demonstrate to the S.A.I., to the investment firm, to holders of an equity stake of the UCITS whose assets are kept safe or to the A.S.F., where applicable, the existence of an objective reason for delegation;

c) the depositary should act with the due competence, care and diligence that are necessary when selecting and appointing a third party entity that intends to delegate part of its tasks, and keeps exercising all due competence, care and diligence that are necessary in the periodic review and ongoing monitoring of the third party entity to whom he has delegated some of his duties and the measures taken by the third party entity in relation to the tasks that have been delegated to it.

(3) The safe keeping duties of the UCITS assets held in custody or of other assets may be delegated by the depositary to a third party entity only if during the entire period of execution of the tasks that were delegated to it:

a) It has structures and expertise appropriate and proportionate to the nature and complexity of assets of the UCITS or S.A.I. acting on behalf of UCITS to whom they have been entrusted;

b) regarding the custody duties provided in art. 52 para. (6) lett. a), they are covered by:

1. effective prudential regulations, including minimum capital requirements, as well as supervision in the jurisdiction in question;

2. an external periodic audit in order to ensure that the financial instruments are in its possession;

c) separates the assets of the depositary's clients from its own assets and the assets of the depositary, so that they can be clearly identified at any time as belonging to the clients of a particular depositary;

d) takes all necessary measures in order to ensure that, in the event of the third party's insolvency, the assets of the UCITS held in custody by the third party entities cannot be used for distribution among creditors, cannot be subject to enforcement proceedings initiated by the creditors of the third party entity, cannot be seized or garnisheed by them; and

e) complies with the provisions of art. 52 para. (2), (6), (8) and (9) and art. 55.

(4) Notwithstanding the provisions of para. (3) b) pt. 1, if the legislation of the third party country requires the safekeeping of certain financial instruments by a local entity and no local entity meets the requirements concerning the delegation provided in that letter, the depositary may delegate his duties to such a local entity only insofar as it is stipulated in the law of the third party State and only as long as there are no local entities that meet the requirements of the delegation, subject to the compliance with the following conditions:

a) the holders of an equity stake of the UCITS in question are adequately informed, before making the investment, that such a delegation is required by the legal constraints of the third party State's legislation in relation to the circumstances justifying the delegation and risks involved;

b) the investment firm or the management company acting on behalf of UCITS instructed the depositary to delegate the custody of such financial instruments to such a local entity.

(5) The third party entity may sub-delegate, in turn, these duties, provided they meet the same requirements. In such cases, art. 54 para. (4) applies to the relevant parts accordingly.

(6) For the purposes of this article, the provision of services under Law no. 253/2004 concerning the finality of settlement in the payment systems and securities settlement systems of operations with financial instruments, as amended and supplemented, by the settlement systems of the equity stake, designated for the purposes of that law, or providing similar services by settlement systems for the equity stake from third party countries is not considered a delegation of the custody duties."

8. Article 53 is amended to read as follows:

" Art. 53. - (1) The storage activity of assets of an UCITS authorized by the A.S.F. can be carried out by:

a) The National Bank of Romania;

b) a credit institution in Romania, authorized by the National Bank of Romania, under the legislation applicable to credit institutions, or a Romanian branch of a credit institution authorized in another Member State in accordance with Directive 2013/36 / EU of the European Parliament and Council of June 26, 2013 on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, of the amending of Directive 2002/87 / EC and the repealing of directives 2006/48 / EC 2006/49 / EC, approved by the A.S.F. for the storage activity, under the provisions of this emergency ordinance and regulations issued by the A.S.F. in applying it; or

c) by another legal entity, approved by the A.S.F. to carry out activities of storage of UCITS assets in accordance with the regulations issued by the A.S.F. for the application of this emergency ordinance and subject to capital adequacy requirements, which are not inferior to the requirements calculated depending on the selected approach, in accordance with article 315 or article 317 of (EU) Regulation No. 575/2013 of the European Parliament and of the Council of June 26, 2013 on prudential requirements for credit institutions and investment firms and the amending of (EU) Regulation No. 648/2012, and

which has personal funds at least equal to the initial capital prescribed in art. 7 para. (8) of Law no. 297/2004 on the capital market, as amended and supplemented.

(2) The legal entity provided in para. (1) lett. c) is subject to the authorization, regulation and supervision of the A.S.F. and cumulatively meets the following minimum requirements:

a) it has the infrastructure required to hold in its custody financial instruments that can be registered in a financial instruments account opened in the depositary's books;

b) it establishes policies and procedures to ensure compliance of the entity with its obligations under this emergency ordinance, including compliance with these obligations by persons in leadership positions and its employees;

c) it has adequate and rigorous administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment and effective mechanisms of control and protection for information systems;

d) it maintains and implements organizational and administrative mechanisms for taking all necessary measures to prevent conflicts of interest;

e) it shall take measures in order to ensure the keeping of records of all services, activities and transactions it carries out, records that are sufficient to allow A.S.F. to fulfill its supervisory duties and perform their actions of enforcement of the application of relevant rules provided in this emergency ordinance;

f) it takes measures to ensure the continuity and proper performance of its depositary duties by using the appropriate systems, resources and procedures;

g) all members of the management body and senior management shall always comply with the conditions of good reputation set by the A.S.F. and shall possess sufficient knowledge, competence and experience;

h) the governing body has overall the appropriate knowledge, competence and experience to be able to understand the depositary's activities, including the main risks;

i) all members of the management body and senior management shall act with honesty and integrity."

9. Article 54 is amended to read as follows:

" Art. 54. - (1) The depositary shall be liable to the UCITS and to holders of equity stake of the UCITS for the loss of financial instruments held in custody in accordance with Art. 52 para. (6) lett. a) regardless of whether the loss is due to the depositary or to a third party entity to whom the custody was delegated.

(2) In case of loss of a financial instrument held in custody by the depositary, he shall return a financial instrument of the same type or value corresponding to the UCITS or S.A.I. acting on behalf of UCITS without any undue delays. The depositary shall be discharged of liability if it can prove that the loss has arisen as a result of an external event beyond reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to counteract it.

(3) The depositary of a UCITS is liable to it and to the investors of the UCITS for any other losses suffered by them as a result of the fact that the depositary, negligently or intentionally, has failed to

properly fulfill his obligations under this emergency ordinance and the regulations issued by the A.S.F. in its application.

(4) The depositary's liability provided in para. (1) - (3) cannot be discounted or limited by contract by the fact that he has delegated the activities mentioned in art. 521.

(5) Any contract concluded in breach of para. (4) is void.

(6) The holders of equity stake issued by UCITS may invoke the depositary's liability, directly or indirectly, via the S.A.I. or the investment company, provided it does not lead to double compensation for the damage or to unequal treatment of holders of equity stake."

10. Article 55 is amended to read as follows:

" Art. 55. - (1) A depositary of the assets of the UCITS cannot meet at the same time the role of S.A.I. or investment firm.

(2) In the performance of their duties, the S.A.I. and the depositary, or the investment company and the depositary shall act honestly, fairly, professionally, independently and exclusively in the interest of the UCITS and their investors.

(3) The Depositary shall not perform activities concerning the UCITS or S.A.I. acting on behalf of the UCITS that could create conflicts of interest between the UCITS, the UCITS investors, the management company and the depositary himself; in the event that potential conflicts of interest are identified, the depositary shall exercise his depository duties distinctly from the other duties that could generate conflicts of interest, which are functionally and hierarchically separate. Potential conflicts of interest are properly identified, managed, monitored and communicated accordingly to the A.S.F. and to the UCITS investors by the decision-making staff of the department / division conducting operations related to the depository activity."

11. Article 56 is amended to read as follows s:

" Art. 56. - (1) The rules of the common fund define the replacement conditions of the S.A.I. and of the depositary and provide rules that ensure the protection of holders of equity stake in the event of such a replacement, in accordance with the A.S.F. regulations.

(2) The articles of association of the investment company define the conditions of replacement of the S.A.I. and of the depositary and provide rules that ensure the protection of shareholders in the event of such a replacement, in accordance with A.S.F. regulations."

12. After article 56, a new article, article 561, is inserted, to read as follows:

" Art. 561. - (1) The depositary shall make available to the A.S.F., on request, all the information that he has obtained in the performance of his duties and that may be necessary to the A.S.F. in order to fulfill its prerogatives.

(2) For UCITS authorized by the A.S.F. but administered by investment management companies in other Member States on the basis of art. 63 para. (2), the A.S.F. shall forward without delay the information received to the competent authorities of the management company."

13. In article 58, the introductory part shall be amended to read as follows:

" Art. 58. - The depositary and the S.A.I. include in the written contract provided in art. 52 para. (1) the following clauses on the services and procedures that must be followed by the contracting parties, taking into consideration the provisions of the delegated documents of the European Commission and the regulations of the A.S.F.:".

14. In article 59 (1), the introductory part is amended to read as follows:

" Art. 59. - (1) The depositary and the S.A.I. include in the written contract provided in art. 52 para. (1) the following clauses on the exchange of information and obligations on confidentiality and money laundering, taking into account the provisions of the delegated Regulation (EU) 2016/438 and the regulations of the A.S.F.:".

15. In article 60, the introductory part is amended to read as follows:

" Art. 60. - If the depositary or the S.A.I. intends to appoint third parties to perform their duties, they shall include in the written contract provided in art. 52 para. (1) the following clauses, taking into account the provisions of the Delegated Regulation (EU) 2016/438 and the regulations of the A.S.F.:".

16. In article 61, the introductory part is amended to read as follows:

" Art. 61. - The depositary and the S.A.I. include in the written contract provided in art. 52 para. (1) the following clauses on amending and termination of the contract, taking into account the provisions of the Delegated Regulation (EU) 2016/438 and the regulations of the A.S.F:".

17. Article 62 is amended to read as follows:

" Art. 62. - (1) Taking into account the provisions of the Delegated Regulation (EU) 2016/438 and the regulations of the A.S.F., the depositary and the S.A.I. include in the written contract provided in art. 52 para. (1) a reference to the fact that the legislation applicable to the contract is the legislation of the Member State of origin of the UCITS.

(2) Where parties to the contract provided in art. 52 para. (1) agree to use electronic transmission of all or part of the information which they exchange, the contract contains, taking into account the provisions of the delegated regulation (EU) 2016/438 and the regulations of the ASF, provisions for keeping a record of this information.

(3) The contract provided in art. 52 para. (1) may cover more than one UCITS managed by the S.A.I. In this case, the contract should list the UCITS covered.

(4) The clauses concerning the methods and procedures referred to in art. 58 lett. c) and d) can be included in the contract provided in art. 52 para. (1) or in a separate written agreement."

18. In article 75. paragraph (1) is amended to read as follows:

" Art. 75. - (1) Where this Emergency Ordinance does not expressly mention the contrary, self-managed investment companies shall comply accordingly with its provisions that are applicable to the S.A.I., which are referred to in art. 6, art. 9. (1) lett. b), c), e) -g), para. (2) and (3), art. 12, art. 33 and art. 52-561, as well as the conditions established by the regulations of the A.S.F."

19. Article 76 is amended to read as follows:

" Art. 76. - The provisions of sections 2, 3 and 6 of the of the chap. II as well as the provisions of art. 34 para. (1) and (2), art. 341, 342 and 36-43 apply accordingly to self-managed investment companies, according to the regulations of the A.S.F."

20. In article 84, paragraphs (1) and (11) are amended to read as follows:

" Art. 84. - (1) S.A.I. and the self-managed investment company must utilize a risk management system in accordance with the regulations of the A.S.F. and in compliance with the guidelines issued by the ESMA, enabling them:

a) to monitor and quantify at any time the risk associated with the positions and their contribution to the overall risk profile of the UCITS portfolio. In this respect, the S.A.I. and the self-managed investment company must not rely solely or automatically on credit ratings issued by credit rating agencies defined in art. 3 para. (1) lett. b) of (EC) Regulation No. 1.060 / 2009 of the European Parliament and of the Council of September 16, 2009 on credit rating agencies in order to assess the creditworthiness of UCITS assets;

b) to ensure an accurate and independent assessment of the value of over-the-counter derivatives.

. . . . . .

(11) Taking into account the nature, scale and complexity of UCITS activities, the A.S.F. monitors the adequacy of the processes of credit risk assessment by management companies or self-managed investment companies, evaluates the use of references to credit ratings as referred to in para. (1) within the investment policies of those UCITS and, where appropriate, encourages the mitigation of the impact of these references, in order to reduce the exclusive and automatic dependence on such credit ratings."

21. In article 92, after paragraph (4), a new paragraph, paragraph (41), is inserted, to read as follows:

" (41) In addition, the annual report contains:

a) the total amount of remuneration pertaining to the financial year, broken down into fixed remuneration and variable remuneration paid by the S.A.I. or by the investment company to their staff, the number of beneficiaries and, if applicable, any amount paid directly from the UCITS account, including any performance fees;

b) the total amount of the remuneration that is broken down by employees or other members of staff referred to in art. 341 para. (3);

c) a description of the calculation method of the remuneration and benefits;

d) the result of the assessment in art. 342 par. (1) lett. c) -e), including any irregularities found;

e) substantial changes to the adopted remuneration policy."

22. In article 93, para. (1) is amended to read as follows:

" Art. 93. - (1) The prospectus must contain the information necessary for investors to be able to assess with full knowledge the investment proposed to them and, in particular, the risks that it entails. The prospectus must include a clear and easy to understand description of the risk profile of the fund, regardless of the instruments in which he is investing. The prospectus must include detailed information on the updated remuneration policy, including, but not limited to a description of the calculation method of the remuneration and benefits, the identity of the persons responsible for assigning the

remuneration and benefits, including the composition of the remuneration committee if such a committee exists. The detailed information on the remuneration policy is publicly available via the website of the S.A.I. or of the self-managed investment company and are delivered free of charge on paper at the request of any interested party."

23. In article 98 paragraph (3), letter a) is amended to read as follows:

" a) the identification of the UCITS and of the competent authority of the UCITS;".

24. In article 98, after paragraph (5) a new paragraph, paragraph (51), is inserted, to read as follows:

" (51) The key information meant for the investors shall also include a statement containing the information provided in art. 93 para. (1)."

25. In article 168 para. (1), letter a) is amended to read as follows:

" a) the written agreement concluded with the depositary, provided in art. 52 para. (1);".

26. In article 180 para. (5), after letter c), a new letter, letter d), is inserted, to read as follows:

" d) the compliance with the request for cooperation is likely to adversely affect the development of its own investigation by the A.S.F., of its own activities pertaining to the checking of the application of the legislation or, where appropriate, a criminal investigation."

27. In article 187, after para. (2) a new paragraph, paragraph (3), is inserted, to read as follows:

" (3) For the processing of personal data carried out on Romanian territory under this emergency ordinance, the A.S.F. applies the provisions of Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and the free circulation of these data, as amended and supplemented."

28. After Chapter VI, a new chapter is inserted, namely Chapter VI1 " The prerogatives of the Financial Supervisory Authority", comprising Articles 1931 and 1932, to read as follows:

"

CHAPTER VI1
The prerogatives of the Financial Supervisory Authority

Art. 1931. - A.S.F. must exercise its powers of supervision and inspection concerning the activity of the UCITS, of the S.A.I., of self-managed investment companies and depositaries of UCITS assets. These powers shall be exercised in any of the following ways:

a) directly;

b) in collaboration with other authorities;

c) under their responsibility, by delegation to entities to which tasks have been delegated;

d) by notifying the competent judicial authorities.

Art. 1932. - In the application of the provisions of art. 1931, the A.S.F. has the following powers:

a) to have access to any documents held by the private individuals or legal entities who are covered by this emergency ordinance, in any form, and to receive copies of them;

b) to require any person who is covered by this emergency ordinance to provide information and, where necessary, to proceed to its hearing;

c) to conduct inspections at the premises of legal entities who are covered by this emergency ordinance and in the case of private individuals, with the support of institutions / authorities / bodies that re responsible for exercising this right;

d) to require private individuals or legal entities who are covered by the provisions of this emergency ordinance to cease any practice contrary to the provisions adopted under this law and to refrain from repeating it;

e) to notify the competent judicial authorities with a view to ordering certain precautionary measures, such as freezing or seizure of the assets of the UCITS, subject to this emergency ordinance;

f) to order the temporary ban on the exercising of the professional activity by legal entities and / or private individuals subject to this emergency ordinance;

g) to adopt, within the limits of its legal competence, measures to ensure that private individuals and legal entities subject to this emergency ordinance comply with the applicable legal provisions in this regard;

h) to request the S.A.I. or the self-managed investment companies the suspension of the issuing or redemption of equity stake in the interest of the holders of such an equity stake or for the public interest;

i) to suspend or withdraw the authorization granted to a UCITS, a S.A.I. or the permit issued to a UCITS depositary;

j) to notify the competent authorities in the field of criminal prosecution;

k) to request information from the auditors of legal entities that conduct business related to the activities regulated by this emergency ordinance."

29. In article 195, after letter a) a new letter, letter a1), is inserted, to read as follows:

" a1) the obtaining by the S.A.I. or by a self-managed investment company of the authorization by making false statements, as provided in art. 11 lett. c);".

30. In article 195, letter l) is amended to read as follows:

" l) noncompliance with the provisions of art. 150, 151 para. (1), art. 152 para. (1), art. 153 para. (5) - (7), art. 154 para. (2), (3) and (5), art. 158 para. (1) (9) - (11), art. 174 para. (2) and art. 176 on cross-border operations;".

31. Article 196 is amended to read as follows:

" Art. 196. - (1) Notwithstanding the provisions of art. 8 of Government Ordinance no. 2/2001 on the legal regime of misdemeanors, approved as amended and supplemented by Law no. 180/2002, as subsequently amended and supplemented, hereinafter referred to as O.G. no. 2/2001, the act of committing the misdemeanors provided in art. 195 are sanctioned as follows:

a) in the case of the misdemeanors provided in art. 195 lett. a)-m) and lett. p):

(i) by a warning or a fine going from 1,000 lei to 22,098,000 lei for private individuals;

(ii) by a warning or a fine going from 10,000 lei to 22,098,000 lei or 10% of the total turnover generated in the financial year that preceded the sanctioning, depending on the severity of the offense, for legal entities;

b) in the case of the misdemeanors provided in art. 195 lett. n) and o):

(i) by a fine going from 10,000 lei to 22,098,000 lei, for private individuals;

(ii) by a fine going from 50,000 lei to 22,098,000 lei or 10% of the total turnover generated in the financial year that preceded the sanctioning, depending on the seriousness of the offense, for legal entities.

(2) Notwithstanding the provisions of para. (1) for committing misdemeanors provided for in art. 195, the A.S.F. can increase the amount of the fines to up to twice the value of the benefit derived from the violation of this emergency ordinance, if the benefit exceeds the amount of 22,098,000 lei.

(3) If the turnover generated in the financial year that preceded the sanctioning is not available at the time of sanctioning, one shall take into consideration the one for the financial year in which the legal entity registered the turnover, the year that immediately preceded the year of reference. The reference year means year that preceded the sanctioning.

(4) If the legal person is a parent company or a subsidiary of the parent company who has the obligation to create consolidated financial accounts in accordance with accounting regulations in force, the relevant total annual turnover is the total annual turnover or the corresponding type of revenue in accordance with the relevant EU law on accounting, as reflected in the last available consolidated accounts approved by the statutory body of the main parent company.

(5) Besides the main misdemeanor sanctions, provided in par. (1) - (4), the A.S.F. may order the application of complementary misdemeanor sanctions for legal entities and / or private individuals that are subject to this emergency ordinance. The complementary misdemeanor sanctions are:

1. suspension of the authorization;

2. withdrawal of the authorization;

3. the prohibition, for a period going from 90 days to 5 years, of the right to hold a position, to engage in any activity or to perform a service for which the authorization is required under this emergency ordinance.

(6) The A.S.F. makes immediately available on its own website any measure or sanction imposed for the breach of the provisions of this emergency ordinance and the regulations adopted for its application, against which there is no means of appeal before the A.S.F. after the person to whom the sanction or measure was imposed was informed about the decision. The publication includes at least information on the type and nature of the breach and the identity of those responsible. This obligation does not apply in the case of the A.S.F. decision of carrying out an inspection regarding those infringements.

(7) If the publication of the identity of legal entities or of the personal data of individuals is considered by the A.S.F. as excessive, as a result of an assessment made on a case by case basis concerning the proportionality of the publication of such information, or if the publication jeopardizes the stability of the financial markets or an ongoing investigation, the A.S.F. may adopt at least one of the following measures:

a) the deferment of publication of the individual act of imposing the sanction or measure until the reasons for nonpublication ceases to be valid;

b) the publication of the individual document of imposition of the sanction or measure without indicating the identity of legal entities or the personal data of private individuals, provided that this publication shall ensure the effective protection of the personal data in question;

c) the failure to publish the individual document of imposition of a sanction or measure, if the options provided in letter a) and b) are considered insufficient in order to ensure:

1. the stability of the financial markets is not jeopardized;

2. that the proportionality of the publication of such decisions is guaranteed in cases where such measures are deemed to be minor in nature.

In the event of a decision to publish the sanction or measure without indicating the identity of legal entities or the personal data of private individuals, the A.S.F. may delay the publication of the relevant data for a reasonable period, if it is expected that during this period the reasons behind this publication shall cease to be valid.

(8) The A.S.F. shall inform the ESMA concerning all administrative sanctions imposed, but not published in accordance with para. (7) letter c), including any appeal lodged against them and its outcome.

(9) If the decision to impose a sanction or to introduce a measure is subject to a means of appeal before the judicial authorities or other relevant authorities, the A.S.F. shall immediately publish on its own website this information and any further information regarding the outcome of the means of appeal. In addition, the A.S.F. shall publish any decision to cancel an earlier decision to impose a sanction or a measure.

(10) The information disclosed pursuant to this article shall be maintained on the A.S.F. website for a period of at least 5 years after publication. The personal data contained in the information published is kept on the A.S.F. website only for the necessary period, in accordance with the relevant legislation on the protection of personal data."

32. Article 199 is amended to read as follows:

" Art. 199. - (1) For the individualization of the sanction, one shall take into account the personal and actual circumstances of the act of committing the offense and the perpetrator’s behavior, depending on:

a) the severity and duration of the infringement;

b) the degree of culpability of the offender;

c) the financial capacity of the offender, as indicated, for example, by the total turnover of the legal entity or the annual income of the individual;

d) the value of the profits gained or of the losses avoided by the offender, the damage sustained by other people and, where appropriate, the damage caused to the functioning of the financial market or to the overall economy, as far as it can be determined;

e) the level of cooperation of the offender with the A.S.F.;

f) the previous violations committed by the offender;

g) any actions taken by the offender after having committed the crime, in order to limit the damage, to cover the injury or to relinquish the commission of the offense.

(2) In exercising its powers to impose the sanctions provided by this emergency ordinance, the A.S.F. cooperates with the competent authorities of other Member States in order to ensure that the administrative sanctions and the supervisory and inspection powers shall produce the expected results by this emergency ordinance.

(3) The A.S.F. shall coordinate their actions with the competent authorities of other Member States in order to avoid any possible repeats and overlap in exercising the powers of supervision and inspection and the application of sanctions and administrative measures in the cross-border cases, in accordance with art. 179 and 180."

33. After article 200, two new articles, articles 2001 and 2002, are inserted, to read as follows:

" Art. 2001. - (1) Reporting to the A.S.F. the violations, possible or certain, of the provisions of this emergency ordinance shall be in accordance with the regulations issued by the A.S.F.

(2) The A.S.F. establishes independent and autonomous channels of communication which are safe and provide confidentiality for receiving reports regarding breaches of the provisions of this emergency ordinance, hereinafter referred to as secure communication methods.

(3) The secure communication methods are considered independent and autonomous, provided they cumulatively meet the following criteria:

a) they shall be separated from the general A.S.F. communication channels, including those by which the A.S.F. communicates internally and with third parties as part of its regular activities;

b) they shall be designed, established and used in a way that guarantees the completeness, integrity and confidentiality of information and prevents the access of unauthorized A.S.F. employees;

c) they enable the sustainable storage of information in accordance with the regulations issued by the A.S.F. in order to allow further investigation. The A.S.F. keeps the records provided at this letter in a confidential and secure database.

(4) The secure communication methods allow the reporting of possible or certain violations at least in the following ways:

a) the written reporting of violations, electronically or on paper;

b) oral reporting of violations, via telephone lines, whether registered or unregistered;

c) meeting with specialized staff of the A.S.F., if necessary.

(5) The A.S.F. shall ensure that reporting a violation received by means other than through the secure communication methods provided in this article is sent immediately, without modification, to specialized employees of the A.S.F., using secure communication methods.

(6) The management process of the A.S.F. for the reports submitted by persons who communicate violations of the provisions of this emergency ordinance is performed according to par. (2) - (5) and the regulations issued by A.S.F., providing:

a) drawing up specific procedures for the receipt of the reports regarding breaches and taking subsequent action;

b) an adequate level of protection of those employees of the S.A.I., of the investment companies or the UCITS depositaries who report breaches committed within those entities, at least concerning acts of vengeance, discrimination and other forms of unfair treatment;

c) the protection of personal data concerning both the person who reports violations of this emergency ordinance and concerning the individual suspected of being guilty of a violation, in accordance with the provisions of Law no. 677/2001, as subsequently amended and supplemented;

d) privacy regarding the person who reports a violation, except where national law requires the disclosure of his identity, in the context of investigations and subsequent legal proceedings.

(7) The reporting by S.A.I. employees of the investment company or the depositaries, in para. (1) - (5) is not considered a breach of any restriction regarding the disclosure of information imposed by contract or by any legislative or administrative act and do not incur the liability of the person who made the notification concerning the reporting.

Art. 2002. - (1) The A.S.F. provides the ESMA annually with aggregated information about all sanctions and measures implemented in accordance with art. 194-200, by January 31 of the following calendar year.

(2) If he has informed the public about the penalties for the failure to comply with this emergency ordinance, the A.S.F. simultaneously reports the sanctions or measures to the ESMA."

34. In article 202, paragraph (1) is repealed.

35. In article 202, paragraph (2) is amended to read as follows:

" (2) The provisions of art. 15, 34, art. 52 para. (3) lett. b)-d) and art. 105 para. (2) will also apply accordingly to the A.O.P.C."

36. In article 33 paragraph (2) letter c), article 82 letter d) point 1 and article 178 paragraph (1) letter d), the phrases "has concluded a cooperation agreement", "there is a cooperation agreement" and "the existence of a cooperation agreement" are replaced, in the order of the enumeration, with the following phrases: "is in a relationship of cooperation", "there is a relationship of cooperation", " the existence of a relationship of cooperation".

37. In the entry regarding the transposition of acts of the European Union, after point 9, a new paragraph, paragraph 10, is inserted, to read as follows:

" 10. Directive 2014/91 / EU of the European Parliament and of the Council of July 23, 2014 on the amending of Directive 2009/65 / EC on the coordination of the legislative or administrative acts

concerning undertakings for collective investment in transferable securities (UCITS) as regards the positions of depositary, remuneration policies and sanctions."

Art. II. - This law comes into force 30 days after its publication in the Official Gazette of Romania, Part I.

Art. III. - The A.S.F. issues regulations for the application of the provisions of the Government Emergency Ordinance no. 32/2012 regarding undertakings for collective investment in transferable securities and investment management companies, as well as for the amending and supplementing of Law no. 297/2004 on the capital market, approved with amendments and supplements by Law no. 10/2015, as subsequently amended, and as amended and supplemented by this law, taking into account the provisions of the (EU) Delegated Regulation 2016/438 and the guidelines issued by the ESMA, on the application of Directive 2014/91 / EU within six months of the entry into force of this law.

Art. IV. - (1) The S.A.I., the UCITS and the UCITS depositaries operating at the time of the entry into force of this law are obligated, within three months of the entry into force of the regulations provided in art. III:

a) to adapt their documents regarding the foundation and operation, as well as the activity, to the provisions of this law;

b) to request the authorization / approval of the necessary amendments to the documents referred to in lett. a) and to submit the applications and documentation to this effect.

(2) The S.A.I., the UCITS and the UCITS depositaries which are pending authorization from the time of the entry into force of this law shall be authorized in accordance with the provisions of this legal act.

Art. V. - After the entry into force of this law, the Government Emergency Ordinance no. 32/2012 regarding undertakings for collective investment in transferable securities and investment management companies, as well as the amending and supplementing of Law no. 297/2004 on the capital market, published in the Official Gazette of Romania, Part I, no. 435 of June 30, 2012, approved with amendments and supplements by Law no. 10/2015, as subsequently amended, and as amended and supplemented by this law shall be republished in the Official Gazette of Romania, Part I, giving a new numbering to the text.

This law was adopted by the Romanian Parliament in compliance with art. 75 and art. 76 para. (1) of the republished Romanian Constitution.

PRESIDENT OF THE CHAMBER OF DEPUTIES NICOLAE-LIVIU DRAGNEA	PRESIDENT OF THE SENATE CĂLIN-CONSTANTIN-ANTON POPESCU-TĂRICEANU

Bucharest, March 24, 2017.

No. 29.