

Regulation no. 4/2021 regarding the control activity carried out by the Financial Supervisory Authority

Pursuant to the provisions of article 1 paragraph (2), article 2 paragraph (1), article 3, 5, 6, as well as of article 21² of the Government Emergency Ordinance no. 93/2012 on the establishment, organization and operation of the Financial Supervisory Authority, approved with amendments and supplements by Law no. 113/2013, with subsequent amendments and supplements,

following the deliberations of the Board of the Financial Supervisory Authority in the meeting held on 27 January 2021,

The Financial Supervisory Authority issues this regulation.

CHAPTER I General provisions

Article 1. - (1) This regulation establishes the procedural framework regarding the control activity carried out by the Financial Supervisory Authority, hereinafter referred to as F.S.A., as well as the rights and obligations of the parties involved in its performance.

(2) In accordance with the provisions of article 3 paragraph (1) section c) and d) and of article 21² of the Government Emergency Ordinance no. 93/2012 on the establishment, organization and functioning of the Financial Supervisory Authority, approved with amendments and supplements by Law no. 113/2013, as subsequently amended and supplemented, hereinafter referred to as G.E.O. no. 93/2012, the specialized organizational structures within the F.S.A. perform the supervision and control of the regulated and / or supervised entities and of the operations carried out by them by permanently verifying their activity in the process of continuous monitoring and supervision, as well as by carrying out periodic and unexpected control actions.

Article 2. - (1) The terms and expressions used in the present regulation have the meaning provided in the legislation specific to the financial supervision sectors, as well as the meanings provided in paragraph (2).

(2) For the purposes of this Regulation, the following terms and expressions shall have the following meanings:

1. control activity - periodic, unexpected or permanent action, based on elements of compliance and / or risk, carried out by the specialized

organizational structures within the FSA, in order to verify the activity, operations, processes and internal mechanisms that are applicable to regulated and / or supervised entities and data subjects;

2. hearing - investigation technique, based on a hearing decision, which consists in determining the conditions and circumstances in which a certain activity was carried out;

3. conciliation - meeting organized at the F.S.A. or at the headquarters of the controlled entity or through the means of online communication (application for organizing remote meetings) which takes place between representatives of the F.S.A. and representatives of the controlled entity in order to clarify any discrepancies between the findings contained in the control report and the controlled entity's objections;

4. unexpected control - type of control consisting in the verification, at the entity's headquarters, of certain activities / operations / processes and internal mechanisms related to a determined period of time and / or the fulfillment of one or several obligations, according to the legislation incidental to the supervisory sector and which is not notified in advance to the controlled entity;

5. periodic control - type of control that consists in the periodic verification, at the headquarters of the entity or from a distance under the conditions provided in articles 18 and 19, of certain internal activities / operations / processes and internal mechanisms related to a determined period of time and the fulfillment of one or several obligations, according to the incidental legislation, based on the integrated annual control plan, approved by the FSA Board, of which the controlled entity is notified in advance;

6. cross-control - technique of verification, at the headquarters of the entities or remotely, of the documents / operations of an entity in correlation with the documents / operations of another entity;

7. permanent control - surveillance activity carried out by the F.S.A. which consists in the continuous monitoring and verification by the specialized organizational structures, in order to exercise the active role of the FSA, the ascertainment of the application of the legal regulations in force by the entities regulated and / or supervised by the FSA, as well as the management corresponding to the risks incidental to their activity;

8. the coordinator of the control team - member of the control team mandated by the control decision to coordinate the activities specific to the periodic or unexpected control action;

9. control decision - administrative act issued at the level of the F.S.A. which orders the carrying out of the periodic or unexpected control;

10. hearing decision - administrative act issued at the level of the F.S.A. ordering a hearing;

11. control team - the persons designated by the periodic or unexpected control decision to carry out the control;

12. hearing team - the persons designated by the hearing decision to perform the hearing of a data subject;

13. controlled entity - any entity that is part of the entities authorized, regulated, supervised and / or controlled by the F.S.A., provided in article 2 paragraph (1) of the G.E.O. no. 93/2012;

14. sampling - the selection of less than 100% of the elements or units of a population for the application of the control procedure, representative of the control activity, in order to provide the control team with a reasonable basis on which to establish findings / recommendations regarding the entire population;

15. conciliation note - document drawn up in two original copies, which contains the result of the debates related to the aspects presented in the control report and the objections transmitted by the controlled entity according to article 22 paragraph (3). The conciliation note is signed by the control team and the management of the controlled entity, a copy being sent to the controlled entity;

16. finding note - unilateral document drawn up within the periodic control actions and unexpected by the members of the control team in situations that require the recording of a state of affairs, in relation to the controlled entity;

17. explanatory note - document prepared and assumed by the representatives of the controlled entity, by the data subject or by the legal representative of any other entity to which specific activities have been outsourced, at the request of the specialized organizational structures or, as the case may be, of the members of the control team / hearing team, in order to provide clarifications / explanations regarding the requested issues;

18. data subject - natural and / or legal person, directly or indirectly involved in the activity verified by the specialized organizational structures with supervisory or control attributions within the F.S.A.;

19. integrated annual control plan - document approved by the F.S.A. through which the entities that will be subject to periodic controls are established, in the respective calendar year;

20. plan of measures - set of obligations imposed by the F.S.A. a controlled entity as a result of the findings from the control activity in order to prevent / remedy some deficiencies found and / or to properly manage some risks;

21. population - whole set of data, documents or operations with common features (units or elements of the population) from which a representative sample is selected, based on which the control team can formulate its conclusions;

22. hearing report - bilateral document concluded on the occasion of a hearing between the data subject and the members of the hearing team, in order to record the statements of the data subject, the documents and information provided to the FSA representatives, as well as any other issues appreciated by the parties as necessary to be included in this document;

23. control report - unilateral document addressed to the controlled entity, prepared by the members of the control team, which records the deficiencies, irregularities, failures, non-conformities found as a result of violation of the legal provisions in force and risks found in the activity of the controlled entity, as well as all aspects found as a result of the periodic or unexpected control;

24. document collection report - a bilateral document concluded between representatives of the controlled entity and the members of the control team, which records all documents, data and situations collected from the entity's headquarters or taken over by electronic means (in case of control carried out remotely), on the occasion of the periodic or unexpected control;

25. permanent control report (supervision) - unilateral document prepared by the specialized organizational structure with supervisory attributions within FSA, in case the verification, analysis or evaluation of the activity of regulated and / or supervised entities and of the data subjects results in the finding of non-compliance with the incidental legal provisions and it is considered, following the analysis performed, that it is necessary to impose a sanction and / or remedial measures;

26. the control topic - includes the objectives / object of the control action established at the moment of drawing up the periodic or unexpected control decision;

27. recommendation addressed to the controlled entity - tool for manifesting the pro-active role of the specialized organizational structure with supervisory responsibilities or of the control team, based on various applicable guidelines or rules, good practices identified at the market level, used to optimize the activity and / or risk management at the level of the supervised or controlled entity;

28. representative of the controlled entity - any person who is part of the management of the controlled entity, persons with key or critical functions directly involved in the activity under control or other persons among the employees of the entity, appointed by its management to represent the company during the periodic or unexpected control;

29. survey - method of verifying the documents, data and operations considered to be representative for an activity / series of operations carried out by a controlled entity.

30. specialized organizational structures with supervisory responsibilities - specialized structures within the F.S.A. carrying out the activity of permanent control.

Article 3. - (1) For the exercise of the control activity, F.S.A. may cooperate and exchange information with any other institutions, bodies and authorities in Romania, Member States and third countries.

(2) Based on the information resulting from the cooperation with other competent authorities, the F.S.A. Board may decide that regular or unexpected inspections of authorized entities operating in other Member

States of the European Union based on the right of establishment or based on the freedom to provide services and multilateral / bilateral protocols / memoranda shall involve the competent authorities of those States, as well as to request the assistance of the relevant European authorities for the activity of those entities, ESMA or EIOPA, as appropriate.

Article 4. - (1) The control activity is developed on two components depending on the particularities of the activities carried out:

a) the compliance component - concerns the violation by the entities, by the persons under their management and by other responsible natural / legal persons according to the applicable regulatory documents of the specific legislation, as well as the potential deviations in connection with the specific activities carried out;

b) the risk component - refers both to the risks registered at the level of the controlled entity, and to those induced at the market level, as the case may be.

(2) Periodic and unexpected controls shall be organized in a procedural manner in a uniform manner across all sectors of financial supervision in accordance with the requirements of this Regulation.

(3) The permanent control is organized procedurally at the level of each specialized organizational structure with supervisory attributions, depending on the category of the controlled entity and / or on the particularities of the activities carried out at their level.

Article 5. - (1) The specialized organizational structures with supervisory attributions and / or control teams may request to the controlled entities / data subjects the transmission of any documents or information they consider necessary in order to verify, analyze or evaluate the compliance elements and / or risk related to the activity carried out.

(2) The requests addressed to the controlled entity / data subjects represent the manifestation of the proactive role of the specialized organizational structure or of the control team, mandatory for the controlled entity, legally substantiated and used in order to remedy non-compliant situations / clarify certain situations / minimize the risk identified in the control activity.

(3) The controlled entity / data subject has the obligation to transmit to the specialized organizational structures or, as the case may be, to the control team or to the hearing team real information and / or correct and complete documents, within the established deadline, in the form and on the requested support, so as not to mislead the FSA or to endanger the conduct of the control activity.

(4) Within the periodic and unexpected control, the F.S.A. can assess by sampling on the significant data, documents and operations to be verified according to their volume, value, weight and relevance, aiming to cover as uniformly as possible the activity of the entity and the analyzed period.

(5) In the application of paragraph (4), for sampling on a population so that it can provide a reasonable basis according to which to draw conclusions about the whole data set from which a sample is selected, criteria such as the following will be taken into consideration:

a) the size, complexity and nature of the controlled entity's activity, the volume and value of transactions, operations or activities carried out, including, as the case may be, the value of assets managed, administered, deposited or in custody;

b) the complexity of the financial products that are the object of the activities, services or operations conducted by the entity, as well as the specific risks attached to them;

c) the number of clients / investors / insured / beneficiaries of financial services and products offered by the entity and the structure of the regular customers;

d) the degree of compliance observed during the supervision process;

e) operations or time intervals, peaks or variations that do not fall within the usual pattern of the entity's activity;

f) the relevant elements identified in the reports submitted to the F.S.A. according to the legislation, in the reports of the IT auditors and in the reports prepared by the persons with key / critical functions within the entities, the number and nature of the complaints registered at the level of the entity and / or at the F.S.A.

(6) The selection of the sample elements is made based on professional reasoning, by survey, and / or on some statistical elements, so that each sampling unit presents a known probability of being selected.

(7) The provisions of paragraph (4) and (5) shall apply accordingly if the supervisory activity based on the reports, indications or notifications received identifies the need to extend the analysis to verify / examine the reality or concordance of data and information submitted by the entity with the requirements of the applicable law .

CHAPTER II

Periodic and unexpected control

SECTION 1

Stages of periodic and unexpected control

Article 6. - The periodic and unexpected control conducted by the F.S.A. at the level of the entities involves the following steps:

a) the stage preceding the control action;

b) carrying out the control;

c) capitalization of the control result;

d) monitoring the results of the control, in case a plan of measures has been imposed on the controlled entity.

Article 7. - (1) In justified situations, during any stage provided in article 6 section a) and b), F.S.A. may issue a new decision on:

- a)** supplementing or modifying the composition of the control team;
- b)** extending the control topic and / or of the controlled period / control period at the entity's headquarters;
- c)** suspending the control for a maximum period of 90 days.

(2) F.S.A. communicates to the controlled entity the decision provided in paragraph (1).

(3) In the situation provided in paragraph (1) section c), F.S.A. communicates to the entity the decision on the date of control suspension and notifies the date of control resumption at least two business days before the resuming the control.

SECTION 2

The stage preceding the periodic or unexpected control action

Article 8. - In the exercise of its attributions, provided in article 3 paragraph (1) section c) and article 212 paragraph (2) and (3) of the G.E.O. no. 93/2012, F.S.A. decides on the type of control to be conducted, depending on the objectives and complexity of the entity's activity, in accordance with the provisions of this regulation and with the specific legislation applicable to each sector of financial supervision.

Article 9. - (1) The triggering of the periodic or unexpected control is performed based on a control decision signed by the F.S.A. Chairman.

(2) The control decision provided in paragraph (1) includes, but is not limited to, the following:

- a)** the type of control;
- b)** the identification data of the entity subject to control;
- c)** the verified period;
- d)** the control period at the entity's headquarters, respectively the start date and the end date of the control action at the entity's headquarters;
- e)** the composition of the control team and its coordinator;
- f)** control topics.

(3) In the case of periodic controls, the control theme is focused on significant elements of compliance and risk related to the activity of the controlled entity and is elaborated, for each controlled entity, according to:

- a)** the range and complexity of the activity and the services provided;
- b)** the level of prudential indicators / economic-financial stability of the entity;
- c)** the risks identified in the supervision process;
- d)** the entity's conduct in relation to customers, the market and the A.S.F.;
- e)** any other relevant information available.

(4) In the case of unexpected control, the control topic is punctual and is based on the results of the permanent control and / or the aspects notified to the F.S.A. by third parties regarding the entity to be controlled.

Article 10. - (1) The controlled entity is notified in writing, at least 15 days before the date established by the F.S.A. to trigger a periodic check.

(2) The notification provided in paragraph (1) is sent by e-mail, fax or letter with acknowledgment of receipt and will contain:

a) the start date and the end date of the control action at the entity's headquarters, the controlled period, the related topic, as well as the first questionnaire for requesting data / information / documents;

b) the mention that any requests for information / data / documents in the form of questionnaires / models / data / information centralizing statements can be transmitted throughout the control.

Article 11. - (1) In case of force majeure or in other exceptional situations making impossible to ensure the necessary conditions for control, the controlled entity may request to the FSA, within maximum 3 business days from the date of receipt of the notification provided in article 10 paragraph (2), to postpone the start of the periodic control with a maximum of 20 business days, submitting the arguments and the corresponding supporting documents.

(2) F.S.A. may request from the entity to be controlled additional explanations / supporting documents in order to adopt a decision regarding the request received and communicate the decision taken, in writing, to the entity.

SECTION 3

The stage of carrying out the periodic or unexpected control

SUBSECTION 1

Rights and obligations of the controlled entity

Article 12. - (1) During the control at the headquarters of the entity, the controlled entity and its representatives have the following rights:

a) to benefit, from the control team, from a fair and equitable treatment, based on a constructive institutional dialogue;

b) to provide to the control team, voluntarily, any explanations they consider necessary in order to clarify some situations identified during the control;

c) their work schedule to be respected; the control may be conducted outside the business hours of the controlled entity, with the prior written consent of its legal representative;

d) to sign, with possible objections, the documents concluded with the control team.

(2) During the control at the headquarters of the entity, the controlled entity and its representatives have the following obligations:

- a) to allow without delay the access of the control team to the spaces where the activity for which it was authorized / approved by the F.S.A. is carried out, as well as to the spaces where the documents related to the activity carried out and the computer systems used are located;
- b) to ensure the development of the control activity in good conditions and to provide the necessary support, without trying to obstruct its performance;
- c) to make available to the control team, within the requested deadlines and in the requested form, any requested document / evidence, of any nature, on any medium indicated by the control team, in original / certified copies according to the original / legalized translations in Romanian, as the case may be, including explanatory notes;
- d) to collaborate, in order to determine the factual situations, by presenting in full the known facts and all the supporting documents and to implement the urgent measures ordered by the control team through the finding notes drawn up;
- e) to sign the documents collection report.

SUBSECTION 2

Rights and obligations of the control team

Article 13. - (1) In the exercise of its attributions, during the control at the headquarters of the controlled entity, the control team has the following rights:

- a) to use any of the established control techniques and tools, such as, but not limited to: questionnaire, survey, interview, observation, cross-check;
- b) to request and verify in full or by sampling any type of document / evidence of any nature, on any medium, that have or may be related to the activity covered by the control action, including the outsourced / transferred activities, as appropriate, as well as computer systems for recording, storing and processing data;
- c) to pick up copies of the documents or centralizing statements, in any format, on any medium, and to request written explanatory notes to the legal representative / management of the controlled entity, to any of its employees, as well as to the legal representative of any other entity to which specific activities were outsourced;
- d) to interview the data subjects within the controlled entity, in order to achieve the control objectives;
- e) to request the immediate initiation of the steps to remedy certain deficiencies in situations of major risk and / or which require urgent measures, by drawing up a finding note in this regard, at the headquarters of the controlled entity;
- f) to have access to any headquarters and premises in which the entity carries out its activity, as well as to the spaces where the documents and computer systems for evidence, storage and data processing are located,

including the headquarters of the entities to which part of the specific activities were outsourced, in the presence of a representative of the controlled entity, who has the obligation to accompany the control team;

g) to request during the stages of the periodic or unexpected control additional information, documents, explanations or clarifications, indicating the response deadlines.

(2) In the exercise of its attributions, during the control at the headquarters of the controlled entity, the control team has the following obligations:

a) to submit the control decision and each of its member to identify himself/herself by presenting the company identity card;

b) to make sure that the control decision has received a registration number from the controlled entity and to record the information related to the control decision in the single control register of the controlled entity;

c) to correctly apply the provisions of the legislation incidental to the controlled entity;

d) to observe the work schedule of the controlled entity; the control may be carried out outside the business hours of the controlled entity, with the prior written consent of its legal representative;

e) to keep the confidentiality on the data and information obtained, in compliance with the legal provisions.

(3) The control team manifests a proactive attitude throughout the control action and ensures the reactive / corrective role of the control.

SUBSECTION 3

Periodic or unexpected control at the entity's headquarters

Article 14. - (1) The control team comes at the headquarters of the controlled entity on the date established for the initiation of the control activity, for the accomplishment of the specific verifications, following the topic corresponding to the control.

(2) If the control team is at the headquarters of the controlled entity, but, for reasons independent of it, is unable to perform the control, it shall draw up a statement of findings containing the reasons that led to the respective situation.

(3) The situation provided in paragraph (2) is brought to the attention of the Chairman of the F.S.A. and of the coordinating vice-president, in case of an unexpected control, or to the F.S.A. Board, in case of a regular control, with proposals for the measures to be taken.

Article 15. - (1) The control team requests clarifications / explanations on certain aspects from the representatives of the controlled entity, by means of a request for information / a questionnaire, and the prepared documents receive a registration number from the controlled entity.

(2) The clarifications / Explanations / Written points of view of the representatives of the controlled entity are the subject of explanatory notes.

Article 16. - (1) In accordance with the provisions of article 13 paragraph (1) section e), insofar as, during the control at the headquarters of the controlled entity, the control team finds risk situations that require the adoption of urgent measures by the controlled entity, they will inform the management of the entity, to whom they will request a decision taking a set of measures, with the related deadlines. The request of the control team shall be recorded in a statement of findings.

(2) The finding note provided in paragraph (1) is registered at the controlled entity and is communicated, under signature of receipt, to the legal representative / management of the controlled entity, a copy of which being retained by the control team and attached to the document collection report.

Article 17. - (1) The control team collects the selected documents from the headquarters of the controlled entity or taken over by electronic means, in case of a control conducted remotely, and draws up in this sense a document collection report, in two original copies, one for each signatory party.

(2) The documents collection report mentions the following:

a) the explanatory notes received by the control team, according to article 15;

b) identification elements of the documents taken by the control team in electronic format / on paper, specifying the number of pages and the fact that they comply with the original;

c) references regarding any other documents, data, situations and / or information presented to the control team;

d) clarifications regarding the fact that all the original documents made available to the control team have been returned, and the entity certifies that the documents in copy presented / picked up by the control team are complete and in accordance with the originals.

Article 18. - (1) By exception from the provisions of article 14 paragraph (1), the stage of carrying out the periodic control action at the entity's headquarters can also be performed remotely:

a) in the situation when, after the beginning of the control action, during the development period, the control team considers necessary to analyse / process some data and information obtained from the controlled entity at the F.S.A. headquarters;

b) in extraordinary situations that endanger or could endanger the health or normal working conditions, such as epidemics, pandemics, extreme natural phenomena, earthquakes, acts of terrorism and other situations that render the conduct of the procedure according to the provisions of this chapter impossible.

(2) In the situations provided in paragraph (1), the interaction between the controlled entity and the control team is performed through electronic means

of communication, such as teleconferencing, videoconferencing, e-mail, electronic platforms, as appropriate. All documents issued during the control are signed by the parties involved, respectively by the members of the control team and / or by the representatives of the controlled entity, as the case may be, with qualified electronic or handwritten signature and photocopied / scanned in PDF format.

(3) In case the periodic control takes place remotely, the provisions of the present regulation regarding the content of the control decision, the provisions regarding the documents drawn up during the control, respectively the notification, the documents collection report, the control report, as well as the provisions regarding conciliation, the rights and obligations of the controlled entity and of the control team shall be applied accordingly.

(4) The controlled entity must have the necessary IT infrastructure and means of communication to ensure the smooth running of the control activity, including a qualified electronic signature and, where necessary, grant the control team access to the information in the IT systems through which the operations subject to verification are performed, according to the control topic.

(5) The access of the control team to the information from the computer systems shall be made on a temporary basis, with the right to view and in compliance with the security policies of the controlled entity, through an employee of the controlled entity designated for this purpose.

(6) The controlled entity has the obligation to appoint a contact person, responsible for communication and cooperation with the F.S.A. during the control. The name of the responsible person shall be notified to the F.S.A. at the beginning of the control or in advance, as the case may be. The obligation to appoint a responsible person also applies in the case of the procedure provided by article 14-17.

Article 19. - The control team transmits the control decision and the request for documents and information it deems necessary for the periodic remote control by electronic means to the controlled entity, and the controlled entity will confirm their receipt and registration in its own records.

SUBSECTION 4

Elaboration of the control report

Article 20. - Throughout the periodic or unexpected control, the main preliminary aspects identified resulting from the examined documents and the verification of information, data and explanations obtained from the controlled entity shall be recorded by the control team in the control report until the control action completion date referred to in the control decision.

Article 21. - **(1)** The control team brings to the attention of the controlled entity during the control action, as well as at its completion, during a closing meeting, the main preliminary aspects identified and, respectively, retained,

resulting from the examined documents and from the discussions / interviews with the persons who provided relevant information for the analyzed aspects, in accordance with the control topic.

(2) The control report signed in handwriting or with qualified electronic signature by the control team shall be registered at the F.S.A. registry and shall include:

a) the elements of risk and prudence identified at the level of the controlled entity, as the case may be;

b) the description of the non-conformity elements found, respectively the facts that represent violations of the specific legislation applicable to the controlled entity, with the indication of the legal provisions retained as not complied with / transgressed;

c) various requests and recommendations addressed to the controlled entity, with the role of preventing or correcting some situations potentially generating deficiencies, mitigating the effects of some produced events or guiding the controlled entity in connection with certain aspects found;

d) other relevant aspects, as the case may be.

(3) The conformity of the control report with the control objectives and the corresponding topic are ensured at the level of the coordination and management functions of the specialized organizational structure with control attributions.

Article 22. - (1) The coordinator of the control team transmits to the controlled entity the control report, drawn up and signed in accordance with article 21 paragraph (2), in electronic format or by any other means of communication that may be subsequently proven within a maximum of 10 business days from the completion of the control action, and requests the representatives of the controlled entity to transmit, if necessary, any objections to the withholdings therein.

(2) The registration number of the control report, received from the F.S.A. registry, shall be entered in the single control register of the controlled entity.

(3) The controlled entity shall send in writing, if necessary, the objections regarding the retentions of the control team mentioned in the contents of the control report within maximum 7 business days from the date of its receipt.

(4) If until the expiration of the deadline mentioned in paragraph (3) no objections were received, the control team records this aspect in the note provided in article 25 paragraph (1).

Article 23. - (1) Within a maximum of 5 business days from the date of receiving the objections transmitted according to the provisions of article 22 paragraph (3) a conciliation meeting takes place between the control team and the management of the controlled entity on the date, time and location agreed upon, if necessary, in order to analyze and clarify the issues supported by the controlled entity in the objections submitted.

(2) The management of the organizational structure of which the control team is a part, as well as other persons from the controlled entity may also participate in the conciliation meeting.

(3) The conciliation meeting shall be recorded in audio format, with the consent of the representatives of the controlled entity participating in it, in order to clarify the issues retained by the control team after periodic or unexpected control, the objections raised by the controlled entity, and analysis recommendations formulated to remove the deficiencies / irregularities found. The records shall be kept for a period of 3 years from the date of its performance, ensuring the appropriate technical and organizational conditions for the protection of personal data contained therein.

(4) The conciliation note which includes the results of the conciliation meeting, including the explanations / motivations of the failure of the control team to submit the objections submitted according to the provisions of article 22 paragraph (3) is drawn up and signed by the participants in the conciliation meeting within a maximum of 5 business days from the date of the conciliation meeting.

(5) repealed.

SUBSECTION 5

Objections to the control report

Article 24. - (1) The controlled entity may transmit the objections to the findings recorded in the control report communicated according to article 22 paragraph (1) to the F.S.A. within the deadline provided in article 22 paragraph (3), and communicates them also in electronic format, with the qualified electronic signature of the legal representative of the controlled entity, to the coordinator of the control team, in order to facilitate their processing.

(2) If they were transmitted, the objections registered according to paragraph (1) are discussed during the conciliation meeting mentioned in article 23 paragraph (1).

(3) The controlled entity has the obligation to inform the persons whose attributions are related to the situations ascertained by the control team, as well as those with whom the employment / representation relations ceased at the date of receiving the control report, on the formulation of possible objections, in compliance with the deadline established for their submission.

SECTION 4

Capitalizing on the results of periodic or unexpected control

Article 25. - (1) The management of the specialized organizational structure of which the control team is part submits for the registration on the agenda of

the meeting of the F.S.A. the Note on the conclusions and proposals regarding the aspects found following the control action, accompanied by the control report, the objections of the controlled entity, if they were transmitted, and the conciliation note, as the case may be.

(2) Based on the information submitted according to paragraph (1), the F.S.A. may order measures and / or sanctions.

Article 26. - (1) According to the specific legislation, the control activity is finalized as a result of the decision of the F.S.A. Board, as the case may be, by:

a) the notification of the controlled entity regarding the results of the periodic or unexpected control, in the conditions in which no deficiencies that would determine the application of sanctioning measures or the disposition of remedial measures and / or the request to send a response / implementation plan of the formulated recommendations in the control report were detected;

b) the notification of the controlled entity comprising its warning and / or of the persons responsible for the deficiencies of low gravity together with the proposed recommendations;

c) ordering a plan of measures in order to remedy the deficiencies found and / or to prevent the occurrence / materialization of some risks in the activity of the controlled entity;

d) requesting the controlled entity to submit a set of measures taken in order to remedy the deficiencies / prevent the occurrence / materialization of some risks to the F.S.A.;

e) sanctioning the controlled entity and / or the persons responsible for the deficiencies found;

f) notifying the competent bodies according to the law, if applicable;

g) any other measures that the F.S.A. Board may adopt, in accordance with its powers, which are not opposable to the controlled entity.

(2) The controlled entity and, as the case may be, the data subjects shall be informed about the results of the periodic or unexpected control, by mail, with acknowledgment of receipt, fax, e-mail, through the representative of the controlled entity or in person, with signature of receipt, except for the situations provided in paragraph (1) section f) and, as the case may be, in paragraph (1) section g).

(3) In the situation where, as a result of the periodic or unexpected control action, sanctions are ordered to the management of the controlled entity or to the persons with key functions, a copy of the sanctioning decision shall be sent for information to the respective entity.

(4) The controlled entity has the obligation to transmit to the F.S.A., within 5 business days at most from the information provided in paragraph (2), evidence of communications concerning the results of periodic or unexpected controls by data subjects.

Article 27. - To the extent that, after the completion of the periodic or unexpected control, the F.S.A. becomes aware of additional information and data regarding the controlled entity and the verified operations, it may decide to initiate a new control action.

SECTION 5

Monitoring the results of periodic or unexpected control, in case a plan of action has been imposed on the controlled entity

Article 28. - (1) In the situation where the F.S.A. issues a plan of action for the controlled entity or requires it to submit a set of measures undertaken in order to remedy the deficiencies / prevent the occurrence / materialization of some risks to the F.S.A., the controlled entity has the obligation to implement the measures ordered by the F.S.A. or those proposed by the controlled entity within the prescribed time limits and to inform the F.S.A. regarding the steps taken to carry it out, within the deadlines and in the required form.

(2) The plan of measures may contain both concrete remedial measures and additional reporting requirements imposed for a specified period of time which shall include, as appropriate, at least the format of the reports, the method of transmission, the deadlines and the periodicity of transmission.

(3) The specialized organizational structures within the F.S.A. monitor, according to their specific attributions, the fulfillment of the concrete remedial measures and the observance of the implementation deadlines for the period stipulated in the plan of measures.

CHAPTER III

Hearing

Article 29. - The organizational structures with supervisory and control attributions within FSA, independent or correlated with the performance of a periodic or unexpected control, may carry out, as the case may be, any additional investigations, using any specific techniques and tools, including hearings of persons who are considered to be able to provide the necessary clarifications to the analyzed / verified situation.

Article 30. - (1) The convocation to the hearing is made based on a hearing decision, under the signature of the coordinating vice-president.

(2) The hearing decision shall be communicated to the data subject by mail, with acknowledgment of receipt, fax or e-mail and shall include at least the following elements:

- a) the topic of the hearing;
- b) the date and place of the hearing;
- c) the documents requested to be submitted during the hearing.

(3) The summoned person has the obligation to appear at the time and place established for the hearing, with the required supporting documents, as the case may be.

(4) The summoned person may request the F.S.A., prior to the hearing, to postpone it for exceptional cases, duly substantiated by supporting documents, and the F.S.A. shall inform him/her of the decision taken on his/her request.

Article 31. - (1) The summoned person is informed by the hearing team regarding the methodology of conducting the hearing at the moment of starting the hearing.

(2) The hearing team may record the discussions during the hearing on electronic devices that allow the storage of data and their subsequent rendering only with the written consent of the interviewed person, and, in case of refusal, the situation shall be recorded in writing.

(3) It is forbidden for the persons heard to use any devices that allow the audio / video recording of the discussions during the hearing and their subsequent playback.

(4) During the hearing, the person heard has the obligation to provide to the hearing team all the information held, correct and complete, on any medium, in any form, without obstructing the investigation, in order to clarify a certain situation, and the information presented is recorded by the person heard in an explanatory note.

(5) The completion of the hearing is achieved by concluding a hearing report whose content is similar to the document collection report provided in article 17 paragraph (2), including any other observations of the parties, considered necessary to be introduced in this document.

(6) The hearing report shall be concluded in two original copies, one for each signatory party, it shall be signed by the person heard and the hearing team and it shall receive a registration number from the F.S.A registry.

CHAPTER IV

Permanent control

Article 32. - (1) The permanent control has a continuous character and is carried out by the specialized organizational structures within the F.S.A. with attributions in this respect, in order to verify, analyze or evaluate the elements of compliance and / or risk related to the activity carried out by the entities.

(2) In the exercise of the permanent control, the specialized organizational structures with supervisory attributions may apply, accordingly, also the provisions of article 29 and 30.

(3) The supervised entities have the obligation to transmit and / or to make available to the specialized organizational structures provided in paragraph (1) acts, correct, complete documents and / or real information within the

established deadline, in the form and on the support requested by these structures, so that the development of the permanent control is not endangered and so that it does not mislead the F.S.A.

(4) The responsibility regarding the transmission and the content of the documents and information provided in paragraph (3) belongs to the management of the entity and / or the responsible person.

(5) The supervised entity must have the necessary IT infrastructure and means of communication to ensure the smooth running of the ongoing control activity, including qualified electronic signatures and, where necessary, to provide access to information from computer systems by means of which the operations subject to verification from the permanent control are performed.

(6) The access to the information from the computer systems will be made on a temporary basis, with the right to view and in compliance with the security policies of the controlled entity, through an employee of the controlled entity designated for this purpose, in order to carry out in good conditions the checks necessary for the permanent control.

(7) The findings resulting from the permanent control regarding the violation of the obligations provided in the applicable legislation by the controlled entities / persons in the management of the controlled entities / responsible natural or legal persons shall be recorded in the Permanent Control Report and they shall be brought to the attention of the controlled entity and its management and / or the persons responsible through it.

Article 33. - The permanent control report provided in article 32 paragraph (7), signed in handwriting or with a qualified electronic signature by the management of the specialized organizational structure, is registered at the F.S.A. and includes, as appropriate, the following:

a) the description of the non-conformity elements found, respectively the facts that represent violations of the specific legislation applicable to the entity, indicating the legal text retained to be non-complied / violated;

b) the elements of risk, prudence or conduct, identified at the level of the entity subject to permanent control, if applicable;

c) the persons considered responsible according to the legislation in force;

d) requests and / or recommendations with the role of preventing or correcting some situations that could generate deficiencies, mitigate the effects of some occurred events or guiding in connection with certain ascertained aspects;

e) other relevant aspects, as the case may be.

Article 34. - (1) The permanent control report, drawn up according to article 33, is transmitted to the controlled entity and to the data subjects by any of the means of communication provided by the Code of Civil Procedure, with the mention of the possibility to express a point of view or objections on the retentions therein; the permanent control report represents the notification of the controlled entity and / or of the management of the controlled entity /

responsible persons regarding the violations of the legal provisions found by the specialized organizational structure within the F.S.A.

(2) The controlled entity and / or the data subjects, notified according to the provisions of paragraph (1), may transmit, including by electronic means, a point of view, explanations, supporting documents or objections regarding the deductions from the Permanent Control Report, within the deadline provided by the applicable legislation, but not more than 7 days from the notification receipt, if the specific applicable legislation does not provide for another deadline.

(3) In case the Permanent Control Report identifies misconducts that imply the application of urgent measures, the controlled entity and / or the data subjects mentioned in paragraph (1) will respond to the request mentioned in paragraph (2), within a maximum of one business day from the date of receipt of the notification regarding the Permanent Control Report, unless the specific applicable primary legislation provides otherwise.

(4) The controlled entity has the obligation to inform the persons whose attributions are related to the situations presented in the Permanent Control Report, as well as those with whom the employment / representation relations ceased before its receipt, in order to formulate possible objections, in compliance with the deadline established in paragraph (2) or (3), as the case may be.

(5) F.S.A. may request the controlled entity and / or the data subjects mentioned in paragraph (1), by electronic means, information, supporting documents, explanations or additional details, for the clarification of certain aspects resulting from the analysis of the point of view or of the objections to the Permanent Control Report, with the indication of the response deadline.

(6) If the requested acts, documents and information, including in the case of the hearing, if any, are not made available to the F.S.A. in accordance with article 32 paragraph (3), as well as within the established deadlines and in the determined form, the deed shall be retained within the conclusions presented in the note mentioned in article 35.

Article 35. - (1) The specialized organizational structure within the F.S.A. analyzes the point of view, the explanations or objections formulated, as well as the additional documents or information transmitted by the controlled entity or its management / data subjects and elaborates the note on the conclusions and proposals regarding the aspects found after the permanent control.

(2) The management of the specialized organizational structure presents for the registration on the agenda of the meeting of the F.S.A. Board the note mentioned in paragraph (1), accompanied by the Permanent Control Report and the objections of the controlled entity / data subjects, if they have been transmitted.

(3) Based on the information presented according to paragraph (2), the F.S.A. Board may order measures and / or sanctions.

(4) In order to capitalize on the results of the permanent control, the provisions of article 26 and 28 shall be applied. Any reference to the result of the control is considered to be made accordingly to the result of the permanent control activity.

CHAPTER V

Penalties

Article 36. - (1) The failure of the controlled entities and / or of the persons in their management and / or of the responsible natural or legal persons to comply with the provisions of the present regulation, as well as with the remedial measures and / or with the additional reporting requirements imposed, immediately or within the deadline indicated by the FSA, shall be sanctioned by the FSA in accordance with the provisions of the specific legislation applicable to the controlled entity, as well as in accordance with the provisions of the G.E.O. no. 93/2012.

(2) The ordering of sanctions and / or measures is made based on the decision of the F.S.A. Board and is communicated to the sanctioned entity / person.

CHAPTER VI

Transitional and final provisions

Article 37. - The periodic or unexpected control actions in progress at the date of entry into force of this regulation shall continue in accordance with the regulations in force at the date of the control action commencement.

Article 38. - (1) This regulation shall be published in the Official Gazette of Romania, Part I, and shall become effective on the date of its publication.

(2) On the date of entry into force of this Regulation, the Regulation of the Financial Supervisory Authority no. 11/2016 on the periodic and unexpected control activity conducted by the Financial Supervisory Authority, published in the Official Gazette of Romania, Part I, no. 1070 of December 30, 2016, as subsequently amended and supplemented, shall be repealed.

Chairman of the Financial Supervisory Authority,
Nicu Marcu

Bucharest, 27 January 2021.
No. 4.