

The Financial Supervisory Authority

Regulation no. 11/2016
on the activity of periodic and unannounced inspection developed by
the Financial Supervisory Authority

In force since December 30, 2016

*Published in the Official Journal, Part I, no. 1070 of December 30, 2016. There
are no amendments until **March 22, 2017***

*Based on the provisions of art. 1 **para. (2)**, art. 2 **para. (1)**, **art. 3, 6**, as well as
of 21² **para. (8)** of the Emergency Government 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 further
amended and supplanted,*

*Following deliberations of the Board of the Financial Supervisory Authority held
in the meeting from December 14, 2016,*

The Financial Supervisory Authority issues this regulation.

CHAPTER I

General provisions

Art. 1. - (1) This regulation lays down the procedural framework of the periodic and unannounced inspection activity of the Financial Supervisory Authority, hereinafter referred to as A.S.F., as well as the rights and obligations of the parties involved in the inspection activity.

(2) According to the provisions of **art. 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 further amended and supplemented, hereinafter referred to as G.E.O. **no. 93/2012**, the specialty structures within A.S.F. develop periodic and unannounced inspection activities for the exercise of A.S.F.'s active role, both for the observation of the application of the legal regulations in force by the entities regulated and/or supervised by A.S.F. and for the proper management of risks occurred in their activities.

Art. 2. - (1) The terms and expressions used in this regulation shall have the meaning provided in the legislation specific for the financial supervision sectors, as well as for the meanings provided at **para. (2)**.

(2) With regards to this present regulation, the terms and expressions below have the following meaning:

a) inspection activity – period or unannounced action developed by the structures within A.S.F., for the verification of activities/operations/processes and internal mechanism of the inspected entities, on conformity and/or risk elements;

b) hearing – investigation technique of a person under investigation, based on a hearing decision for determining the conditions in which a certain activity was performed;

c) unannounced inspection– type of inspection that is not previously notified to the inspected entity and consists in verification, at the headquarter of the entity, of certain activities/operations/processes and internal mechanisms associated to a determined period of time and/or of the fulfilment of one or more obligations, according to the legislation of the financial supervision sector;

d) periodic inspection – type of inspection in relation with which the inspected entity is previously notified and which consists in the periodic verification, at the headquarter of the entity, of certain activities/operations/processes and internal mechanisms associated to a determined period of time and of the fulfilment of one or more obligations, according to the legislation, based on the integrated annual inspection plan, approved by the Board of A.S.F.;

e) cross-check – verification technique, at the headquarter of the entities or of A.S.F., of the documents/operations of an entity in interconnected with the documents/operations of another entity;

f) coordinator of the inspection team – member of the inspection team empowered, by the inspection decision, to coordinate activities specific for the inspection action;

g) inspection decision – administrative document issued at the level of A.S.F., by which it is required the performance of the periodic or unannounced control;

h) hearing decision – administrative act issued at the level of A.S.F., by which it is required a hearing;

i) inspection team – persons designated based on the inspection decision for the performance of the inspection action;

j) hearing team – persons designated by the hearing decision to perform the hearing of a person under investigation;

k) inspected entity – entities authorised, regulated and/or supervised by A.S.F., provided at art. 2 [para. \(1\)](#) of G.E.O. no. 93/2012;

l) finding report – unilateral document drafted by the members of the inspection team in situations that requires registration of the state of affairs in relation with the inspected entity;

m) annotation - document drafted and undertaken by the representatives of the inspected entities, by the persons concerned or by the legal representative of any entity to which the specific activities were externalized, at the request of the members of the control/hearing team, with the purpose of offering clarifications/explications on the requested aspects;

- n)** person concerned – natural and/or legal person, directly or indirectly involved in the activity verified by the structures with inspection attributions of A.S.F.;
- o)** integrated annual inspection plan – document approved by the Board of A.S.F., by which the entities that will be the subject of period inspection are established, in the respective calendar year;
- p)** measure plan – set of obligations imposed to an entity inspected by A.S.F. with the purpose of remedying certain deficiencies found and/or the proper management of certain risks;
- q)** hearing protocol – bilateral act concluded when developing a hearing between the person concerned and the members of the hearing team, with the purpose of recording the presence of the person concerned at the hearing, the document and information at the disposal of the A.S.F. representatives, as well as any other aspects deemed as necessary by the parties to be included within this document;
- r)** inspection protocol – unilateral document addressed to the inspected entities, drafted by the members of the inspection team, in which the found deficiencies, irregularities, dysfunctions and the risks in the activity of the inspected entity are recorded, as well as all the aspects found following the development of the inspection activity;
- s)** document seizure protocol – bilateral document, concluded between the representatives of the inspected entities and the members of the inspection team, by which all the documents, data and situations taken by the inspection team from the headquarter of the entity are recorded, as well as other observations deemed as necessary to be recorded by any of the signatory parties;
- t)** inspection theme – consists of the objectives/object of the inspection action established when drafting the inspection decision;
- u)** recommendation addressed to the inspected entity – instrument of the pro-active role of the inspection team, on the basis of certain applicable orientations or guidelines, best practices identified at the level of the market, used for the purpose of optimization of the activity and/or risk management at the level of inspected entities;
- v)** financial supervision sectors – Financial investments and instruments sector, Insurance-reinsurance sector and Private pensions system sector;
- w)** request addressed to the inspected entity – instrument of the pro-active role of the inspection team, mandatory for the inspected entity, substantiated from a legal point of view and used for the remediation of certain non-complying situations/clarification of certain situations/minimization of the risk identified within the non-control;
- x)** survey – method for verifying documents, data and operations considered to be representative for an activity/series of operations developed by a inspected entity;
- y)** inspection structure – organizational structure within A.S.F. with inspection attributions.

Art. 3. - (1) For exercising inspection attributions provided at art. 1 para. (2), A.S.F. may cooperate and may exchange information with any other institutions, organism and authorities from Romania, member states or third countries.

(2) Based on the information resulted following the cooperation with other competent authorities, the Board of A.S.F. may decide that in the inspection actions at authorised entities that develop activities in other member state of the European Union based on the right of establishment or on the liberty to provide services and on certain protocols/multilateral or bilateral memorandums to participate competent authorities from the respective states, as well as to request the assistance of the European authorities relevant for the activity of the respective entities, ESMA or EIOPA, if the case.

Art. 4. - The inspection activity is organized procedurally at the level of each financial supervision sector, depending on the particularities of the activities performed, being developed on two components:

a) conformity component – targets breaches of legislation/eventual irregularities with regards to the specific activities developed;

b) risk component – targets the minimization of the impact of risks registered both at the level of the inspected entity and at market level.

CHAPTER II

Stages of the inspection activity

SECTION 1

General provisions

Art. 5. - (1) The inspection activity developed by A.S.F. at the level of inspected entities involves the following stages:

1. preliminary stage to the inspection activity;

2. development of the control;

3. enforcement of the results of the control.

(2) After finalizing the control, in case in which it was imposed to the inspected entity a measure plan, this shall be monitored by A.S.F., through specialized structures, according to the provisions of this regulation.

Art. 6. - (1) In justified situations, during each of the stages provided at art. 5 para. (1), A.S.F. shall issue a new decision regarding:

a) supplement or amendment of the component of the inspection team;

b) extension of the theme of the inspection and/or inspected period;

c) suspension of the inspection for a period of maximum 90 days.

(2) A.S.F. shall communicate to the inspected entity the decision provided at para. (1).

(3) In the situation provided at para. (1) letter c), A.S.F. shall communicate to the entity the decision regarding the date of suspension of the control, and the date of resumption of the inspection shall be notified to the entity with at least two working days prior to the resumption of the control.

SECTION 2

Preliminary stage to the inspection activity

Art. 7. - When exercising its attributions, provided at art. 3 para. (1) letter. c) and art. 21² para. (2) and (3) of G.E.O. no. 93/2012, A.S.F. shall decide the type of inspection that is to be performed, depending on the objectives and complexity of the activity of the entities, in accordance with the provisions of this regulation and with the specific legislation applicable to each financial supervision sector.

Art. 8. - (1) The initiation of a periodic or unannounced inspection must be made based on a inspection decision signed by the president of A.S.F.

(2) The inspection decision provided at para. (1) consists of, without limitation:

- a)** type of control;
- b)** identification data of the entity subject of the control;
- c)** verified period;
- d)** starting date of the inspection activity;
- e)** component of the inspection team and its coordinator;
- f)** inspection theme.

(3) In case of a periodic control, the inspection theme is focused on significant conformity and risk elements associated to the activity of the entity that is subject of the inspection and must be elaborated, for each entity, depending on:

- a)** range and complexity of the activity and services provided;
- b)** level of prudential indicators/economic-financial stability of the entity;
- c)** risk identified during the permanent supervision process;
- d)** behaviour of the entity in relation with its clients, market and A.S.F.;
- e)** any other available relevant information.

(4) In case of an unannounced control, the theme of the inspection is punctual and it is based on the results of the supervision process and/or aspects brought to the attention of A.S.F. by third parties on the entities that is to be controlled.

Art. 9. - (1) The inspected entity is notified in writing, with at least 15 working days before the date established by A.S.F. for the initiation of a periodic control.

(2) Notification provided at para. (1) shall be set by a letter of confirmation of receipt, fax or e-mail and shall contain:

- a)** starting date of the inspection and associated theme;
- b)** eventual preliminary requests of information/data/documents in the form of questionnaires/simulations/centralized data situations/information.

(3) The inspected entity has the liability to put at the disposal of the inspection team the answers required in due time and in the request format.

Art. 10. - (1) In case of force majeure or in other exceptional situations, making impossible the assurance of the necessary conditions for the control, the inspected entity may request A.S.F., in maximum 3 working days from the date of receipt of the notification provided at art. 9 **para. (2)**, the postponement of the initiation of the period inspection with maximum 20 working days, by presenting arguments and supporting documents.

(2) A.S.F. may request the entity that is to be inspected explications/supporting document in order to adopt a decision on the received request and shall communicate in writing its decision to the entity.

SECTION 3

Stage of the development of the control

SUBSECTION 1

Rights and obligations of the inspected entity

Art. 11. - (1) During the performance of the inspection at the headquarter of the entity, the inspected entity, through any representative or employee, has the following rights:

a) to benefit, from the inspection team, of a just and reasonable treatment, based on an institutional constructive dialogue;

b) to supply voluntarily to the inspection team any explication that it considers necessary for the clarification of certain identified situations during the control;

c) to respect his work schedule; the inspection may be developed outside of the working hours of the inspected entity, with the prior written agreement of the legal representative of the entity;

d) to sign, with eventual objections, the documents concluded with the inspection team.

(2) During the performance of the inspection at the headquarter of the entity, the inspected entity, through any representative or employer, has the following obligations:

a) to permit the access of the inspection team in the spaces in which the activity for which it was authorised/endorsed by A.S.F. is performed, as well as in the spaces in which the documents associated to the activities and used IT systems are.

b) to ensure the development in good conditions of the inspection activity and to grant the necessary support, without trying to obstruct its development;

- c) to put at the disposal of the inspection team, in due time and in the requested format, any document/evidence requested, of any nature, in any format indicated by the inspection team, in original/certified copies according to the original/notarised translations in Romanian, if the case, including annotations;
- d) to collaborate, in order to determine the facts, by presenting in full the known facts and all the supporting documents and to implement the urgent measures disposed by the inspection team by the findings reports drafted;
- e) to sign the document seizing protocol.

SUBSECTION 2

Rights and obligations of the inspection team

Art. 12. - (1) In exercising its activities, during the performance of the inspection and the headquarter of the inspected entity, the inspection team has the following rights:

- a) to use any of the inspection techniques and instruments, without limitation to these: questionnaire, survey, interviews, observations, cross-checks;
- b) to request and to verify fully or by survey any type of document/evidence of any nature, in any format, that are or may be in relation with the activity sought by the inspection team, including the externalized/transferred activities, if the case, as well as all the IT systems for evidence, storage or data processing.
- c) to take copies of the documents or centralized situations, in any format, and to request written annotations from the legal representative/management of the inspected entity, of any employee if it, as well as of the legal representative of the entity to which the specific activities were externalized;
- d) to interview persons within the inspected entity, in order to achieve the objectives of the control;
- e) to request the immediate initiation of the remediation endeavours of certain deficiencies in major risk situations and/or to impose urgent measures, by drafting for this a findings report, at the headquarter of the inspected entity;
- f) to have access in any office or location in which the entity develops its activity, as well as in the spaces where documents and IT systems for evidence, storage or data processing are, including in the offices of the entities to which they externalized part of the specific activities, in the presence of a representative of the inspected obligation, that have the liability to accompany the inspection team.

(2) In exercising its attributions, during the performance of the inspection at the headquarter of the inspected entity, the inspection team has the following obligations:

- a) to present the inspection decision and to identify himself by presenting the service card;

- b)** to ensure that the inspection decision has received a registration number from the inspected entity and to record the information associated to the inspection decision in the single inspection register of the inspected entity;
 - c)** to correctly apply the provision of the legislation applicable to the inspected entity;
 - d)** to respect the work schedule of the inspected entity; the inspection may be performed outside the working hours of the inspected entity, with the prior written agreement of the legal representative of this;
 - e)** to keep confidentiality of the data and information obtained, respecting the legal provision;
- (3)** The inspection team manifest during the entire inspection action a pro-active attitude and assures the reactive/corrective role of the control.

SUBSECTION 3

Inspection at the headquarter of the entity

Art. 13. - (1) The inspection team shall present itself at the headquarter of the inspected entity at the date established for the initiation of the inspection activity, in order to perform the specific verifications, following the themes associated to the control.

(2) If the inspection team is at the headquarter of the inspected entities, but, for reasons independent from it, it is in difficulty to perform the control, it shall draft a findings report that consists of the reasons that lead to this respective situation.

(3) The situation provided at para. (2) is brought to the knowledge of the A.S.F. president and coordinator vice-president, in case of an unannounced control, or of the Board of A.S.F., in case of a periodic control, with proposals in order to adopt the necessary measures.

Art. 14. - (1) The inspection team request to the representatives of the inspected entity clarifications/explications on certain aspects, through a request of information/questionnaire, and the drafted documents shall receive a registration number from the inspected entity.

(2) The written clarifications/explications of the representatives of the inspected entity are the object of an annotation.

Art. 15. - (1) In accordance with the provisions of art. 12 para. (1) **letter. e)**, to the extent in which, while performing the inspection at the headquarter of the inspected entity, the inspection team finds risk situations that impose the adoption of certain urgent measures from the part of the inspected entity, it shall bring it to the knowledge of the entity and shall request the assuming of the decision upon a certain set of measures, with the associated due dates. The request of the inspection team is registered in a findings report.

(2) The findings report provided at para. (1) is registered at the inspected entity and is communicated, under a signature of receipt, to the legal representative/management of the inspected entity.

(3) The findings report shall be drafted by the inspection team also in the situation in which it is in the impossibility to perform the inspection action, from reasons independent of the inspection team.

Art. 16. - (1) The inspection team collects the selected document from the headquarter of the inspected entity, based on the document seizure protocol, which shall be drafted in two original copies, one for each signatory.

(2) The document seizure protocol consists of:

a) annotations given during the control, according to [art. 14](#);

b) elements of identification of the documents taken by the inspection team in electronic format/by mail, while mentioning the number of pages and the fact that these are true copies;

c) any other documents, data, situations and/or information that the parties consider relevant;

d) the mention that all the original document, put at the disposal of the inspection team, have been returned, and the entity certifies the fact that the copies of the documents presented/taken by the inspection team are complete and are according to the original.

Art. 17. - (1) The inspection team may request, in writing, information or documents from the inspected entity and/or may return anytime to the headquarter of the inspected entity for additional documentation/explications or clarifications after the closure of the collection procedure of documents/information/explications from the headquarter of the inspected entity and until the transmission, to the inspected entity, of the results of the inspection by the Board of A.S.F.

(2) The date on which the inspection team returns to the headquarter of the inspected entity shall be communicated to the inspected entity at least with two days before, in writing.

(3) Taking copies of the documents/data/additional information and procurement of explications/clarifications shall be made based on a document seizure protocol, respectively an annotation, according to the provisions of art. 16 [para. \(2\)](#) and of art. 14 [para. \(2\)](#).

SUBSECTION 4

Drafting of the inspection protocol

Art. 18. - (1) The inspection team shall draft the inspection protocol based on verified documents, information, data and explications obtained from the inspected entity, as well as on any relevant information.

(2) The inspection protocol consists of:

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

b) found non-conformity elements, respectively facts that represent breaches of specific legislation applicable to the inspected entity;

c) various requests and recommendations addressed to the inspection entities, having the role of preventing or correcting certain situations that may potentially generate deficiencies, attenuating the effects of some events occurred or guiding the inspected entity in relation with certain found aspects;

d) other relevant aspects, as appropriate.

(3) The conformity of the inspection protocol with the objectives of the inspection and the associated themes are ensured at the level of the coordination and management functions of the inspection structure.

Art. 19. - (1) The inspection protocol is signed by the inspection team, is registered at the A.S.F. registry and is communicated to the inspected entity, in order to bring to the knowledge of the entity the findings following the performance of the inspection and to express eventual objections.

(2) The inspection team submits the electronic version of the inspection protocol to the inspected entity, with the electronic signature of the coordinator of the inspection team, in order to facilitate the processing of the information contained in it.

(3) The registration number of the inspection protocol, received from the A.S.F. registry, shall be written in the single inspection registry of the inspected entity.

SUBSECTION 5

Objections to the inspection protocol

Art. 20. - (1) The inspected entity, under the signature of the legal representative/manager of the entity, has the right to express in writing objections on the findings recorded in the inspection protocol, as follows:

a) in maximum 3 working days since the date of receipt of the inspection protocol, in case of unannounced control;

b) in maximum 7 working days since the date of receipt of the inspection protocol, in case of periodic control.

(2) The inspected entity submits the objections at the registry of A.S.F. and shall communicate these in electronic format as well, with the electronic signature of the legal representative of the coordinator of the inspection team, in order to facilitate their processing.

(3) In exceptional situations, at the solid request of the inspected entity, the terms provided at para. (1) may be extended, with the agreement of the coordinator vice-president, with maximum 3 working days in case of unannounced control, respectively with maximum 7 working days in case of periodic control.

(4) The inspected entity has the liability to inform the persons whose attributions are in connection with the situations found by the inspection team, as well as those

that have terminated the work/representation relationships at the date of receipt of the inspection protocol, in order to express eventual objections, while respecting the established term for submitting the objections.

Art. 21. - The inspection team or the inspected entity may expressly request, as an optional stage, the organization of a meeting at the headquarter of A.S.F., to clarify aspects arising following the transmission of the objections by the inspected entity.

SECTION 4

Enforcement of the results of the inspection

Art. 22. - (1) The inspection team analyses the objections expressed by the inspected entity with regards the inspection protocol and drafts its conclusions and proposals on the aspects founds.

(2) Based on the inspection protocol and on the information according to para. (1), the Board of A.S.F. may dispose measures and/or sanctions.

Art. 23. - (1) According to the specific legislation, the inspection activity shall be finalized following a decision of the Board of A.S.F., as the case may be, by:

a) notification of the inspected entity regarding the results of the control, if deficiencies were not found that could determine the application of sanctioning measures or disposal of remediation measures;

b) notification of the inspected entity on warning it and/or the responsible persons for deficiencies with a small degree of gravity;

c) lay-out of a measure plan in order to remedy the deficiencies found and/or to prevent the apparition/materialization of certain risks in the activity of the inspected entities;

d) request that the inspected entity to submit to A.S.F. a set of assumed measures in order to remedy the deficiencies/to prevent the apparition/materialization of certain risks;

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

f) seizing the organs empowered by law, if the case;

g) any other measures that the Board of A.S.F. may adopt, according to its competences, which are not opposable to the inspected entity.

(2) The inspected entity and, as the case may be, persons concerned are informed of the results of the inspection adopted by the Board of A.S.F., by post with confirmation of receipt, fax or e-mail, excepting the situations provided at para. (1), letter f) and, as appropriate, at para. (1), letter g).

(3) The inspected entity has the liability to send to A.S.F. in maximum 5 working days from the information provided at para. (2), the evidences of the communication of acknowledgment of the results of the control.

Art. 24. - If, after the finalization of the control, A.S.F. enters into the possession of certain information and additional data regarding the inspected entity and the verified operations, it may decide the initiation of a new inspection action.

SECTION 5

Monitoring of the results of the control, in case a measure plan was imposed to the inspected entity

Art. 25. - (1) In the situation in which A.S.F. issues a measure plan for the inspected entity, this is liable to implement the measures disposed in the terms established and shall inform A.S.F. on the endeavours performed for fulfilling this plan, in due terms and requested form.

(2) The measure plan may contain both concrete remediation methods as well as additional reporting requirements, imposed for a determined period of time.

(3) The inspection structures within A.S.F. monitor, during the period stipulated in the measure plan, the fulfilment of the concrete remediation measures and the compliance with the implementation terms.

(4) If the inspected entity, from grounded reasons, cannot fulfil the remediation measures imposed, in due time, but has already initiated endeavours for remediation, the monitoring of their fulfilment is taken over by the specialized structures of A.S.F., according to their specific attributions.

(5) The monitoring of the fulfilment of the additional reporting requirements to A.S.F., established through the measure plan and eventual obligations with permanent character is made by the specialized structures within A.S.F, according to their specific attributions.

CHAPTER III

Hearing

Art. 26. - The structures with inspection attributions within A.S.F, independent or correlated with the performance of a periodic or unannounced control, may perform, as appropriate, any additional investigations, using any specific inspection techniques and instruments, including hearings of persons that may offer clarifications necessary for the analysed/verified situation.

Art. 27. - (1) Convoking to a hearing is made based on a hearing decision, under the signature of the coordinator vice-president.

(2) The hearing decision is communicated to the person concerned by post, with confirmation of receipt, fax or e-mail, and must consist in the following elements:

- a)** the topic of the hearing
- c)** date and place of the hearing
- d)** requested document in order for these to be presented at the hearing;

(3) The convoked person has the liability to be present at the moment and place established for the performance of the hearing, with the requested supporting documents, as appropriate.

(4) The convoked person may request A.S.F., prior to the hearing, the postponement for exceptional cases, solidly reasoned through supporting documents, and A.S.F. shall communicate the decision adopted regarding his request.

Art. 28. - (1) The convoked person is informed by the hearing team on the development methodology of the hearing when initiating the hearing.

(2) The hearing team may record the discussion within a hearing on electronic devices that allow the storage of the data and their ulterior replay, only with the written consent of the heard person, and, in case of refusal, the situation must be recorded in writing.

(3) It is forbidden the use by the heard persons of any devices that allow the audio/video recording of the discussions within the hearing and their ulterior replay.

(4) During the hearing, the heard person has the liability to supply the hearing team all the information it holds, accurate and complete, in any format, without obstructing the development of the investigations, in order to clarify certain situations, and the information presented must be recorded by the heard person within an annotation.

(5) The finalization of the hearing is made by concluding a hearing protocol, with a similar content with that of the document seizure protocol provided at art. 16, para. (2), consisting in any other observations of the parties, considered necessary to be introduced within this document.

(6) The hearing protocol is concluded in two original copies, one for each party and shall receive a registration number from the A.S.F. registry.

CHAPTER IV

Penalties

Art. 29. - (1) Non-compliance of the inspected entities and persons concerned in the inspection activity with the provisions of this regulation shall be penalised by A.S.F. according to the provisions of the sectorial legislation in force.

(2) The penalties and/or measures shall be made based on the Decision of the Board of A.S.F., by decision signed by the president of A.S.F. and shall be communicated to the penalised entity/person.

CHAPTER V

Transitional and final dispositions

Art. 30. - The ongoing inspection activities as at the date of entering into force of this regulation shall be continued according to the regulations in force at the time the inspection was commenced.

Art. 31. - (1) This regulation shall be published in the Official Journal of Romania, Part I and shall enter into force at the date of its publication.

(2) At the date of entering into force of this regulation, the ASF Regulation [no. 2/2015](#) on the periodic and unannounced inspection activity developed by the Financial Supervisory Authority, published in the Official Journal of Romania, Part I, no. 148 from February 27, 2015 shall be repealed.

President of the Financial Supervisory Authority,

Mișu Negrițoiu

Bucharest, December 15, 2016.
No. 11.