

## **Romanian Parliament - Law no. 236/2018 of October 5, 2018**

### **Law no. 236/2018 on the distribution of insurance**

in force since October 1, 2018

Published in the Official Gazette, Part I no. 853 , October 8<sup>th</sup>, 2018.

Form 2018 Parliament applicable law.

#### **CHAPTER I**

#### **General Article 1**

##### **Scope**

(1) This law governs:

- a) the insurance and reinsurance products distribution activity hereinafter referred to as the distribution activity;
- b) organization and operation of insurance and reinsurance distributors, the supervision of distribution and its related activities;
- c) registration of intermediaries, including licensing or their approval, the Financial Supervisory Authority, hereinafter referred to as A.S.F.

(2) This law applies to individuals, or legal persons, regardless of the tax system in force:

- a) established or willing to establish in Romania in order to conduct distribution;
- b) developing or willing to develop distribution activity in Romania;
- c) headquartered or domiciled in Romania and intend to establish or perform distribution activity in other Member States.

(3) For the purposes of this law, consumer means only the individual consumer/person, according to the applicable national law, and the client means both the consumer and client as a legal entity.

#### **Article 2**

##### **Exclusions**

(1) Intermediaries for auxiliary insurance who operate distribution activities shall be exempted from the provisions of this law if all the following conditions are fulfilled:

- a) the insurance is complementary to the goods offered by a vendor or service provider, if the insurance covers one of the following:
  - (i) the risk of breakdown, loss of or damage to property or risk of non-use of the service, which is expected to be used at a given time;
  - (ii) damage to or loss of baggage or other risks linked to the travel booked by the provider;

b) the coverage of insurance product, calculated pro rata on a yearly basis, shall not exceed the equivalent in RON of 600 EUR;

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c) notwithstanding the point b), when the insurance is complementary to the service provided to the point a) and length of service is less than or equal to 3 months, the coverage paid per person does not exceed the equivalent in RON of EUR 200 EUR.

(2) The insurance intermediaries or insurance brokers who carry out auxiliary insurance distribution with intermediaries exempted from this law, in accordance with paragraph(1), comply with the following requirements:

- a) provide the customer the following before the contract:
- (i) information on the identity, business name /name and address of the insurer or intermediary concerned;
  - (ii) information on the procedures laid down in art. 4 paragr. (20);
  - (iii) a standardized information document referred to in Art. 14 para. (6);
  - (iv) other information according to the law;
- b) establish written policies, the principle of proportionality to comply with the following:
- (i) the measures specified in Article. 4 para. (21);
  - (ii) Art. 12 para. (1) - (5) and art. 16;
  - (iii) requirements and needs of the customer before proposing a contract.
- (3) This Act does not apply to distribution activities regarding risks and commitments located outside the Member States.
- (4) This law does not affect the regulations regarding distribution activities conducted by firms or intermediaries established in a third country and operating in Romania under the principle of freedom to provide services, provided equal treatment guarantee for all persons carrying out or authorized to carry out distribution activities on that market.
- (5) This law does not regulate the distribution activities of insurance or reinsurance conducted in third countries.

### **Article 3**

#### **Definitions**

- (1) For the purposes of this law, the terms and phrases below have the following meanings:
1. significant shareholder or associate - a person who, directly and individually or by or in conjunction with other natural or legal persons, holding a qualified participation;
  2. insurer - an insurance company as defined under art. 1 par. (2) pt. 3 and 4 of Law no. 237/2015 regarding the authorization and supervision of insurance and reinsurance and performing distribution of insurance and reinsurance under section. 9:10;
  3. The competent authorities - the authorities of the Member States authorized by laws, regulations or administrative provisions to record and / or supervise, as appropriate, insurance intermediaries, reinsurance or ancillary insurance in those States;
  4. Ruler- the governing body, management or control of companies and a leading intermediary with the peculiarities of single or dual system, or, where appropriate, the Company Law no. 31/1990, republished with amendments and additions; where leading intermediary credit institutions or investment firms, as defined under art. 4 para. (1) pt. 1 and 2 of 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 amending Regulation (EU) No. 648/2012 (Regulation no. 575/2013), ruler means the person / persons responsible for management of the distribution activity that is / are part of the governing body;

5. advice - provision of personal recommendations to a client or potential client at his request or at the initiative of the insurance distributor in connection with one or more insurance contracts;

6. distributor of insurance - insurance intermediary, auxiliary insurance intermediary or insurer;

7. The reinsurance distributor- reinsurance or reinsurance intermediary;

8. Distributor - those referred to in section. 6 and 7;

9. distribution of insurance - work consisting of advice on insurance contracts, proposals for such contracts or other work preparatory to the conclusion of such contracts, the conclusion of such contracts or assistance administration and performance of such contracts, especially in the case of claims, including information on one or more contracts of insurance in accordance with the criteria selected by the customer on a website or other means of communication and the formation of a ranking of insurance products, including price and product comparisons or a discount on a premium, if the client is able to enter an insurance contract directly or indirectly by using a website or other media;

10. Distribution of reinsurance - the activity which is advisory on reinsurance contracts, proposals for such contracts or other work preparatory to the conclusion of such contracts, the conclusion of such contracts or assistance for administration and performance of such contracts, particularly where an action for compensation was claimed, including the case when they are carried out by the reinsurer without the involvement of a reinsurance intermediary;

11. insurance intermediary - individual or legal entity other than a company or its employees and other than an ancillary insurance intermediary who initiates or carries on distribution of insurance in exchange for remuneration;

12. Ancillary insurance intermediary - individual or legal entity other than a credit institution or an investment firm as defined in Art. 4 para. (1) pt. 1 and 2 of Regulation No. 575/2013, which initiates or pursues, in exchange for remuneration, insurance distribution activities of the subsidiary, fulfilling the following conditions:  
a) not to operate insurance distribution as the principal professional activity;  
b) only distributes insurance products that are complementary to a good or service;  
c) the insurance products concerned exclude risks in life insurance and liability, unless the covering of such risks is complementary to the goods or services offered as part of its main professional activity;

13. The intermediary of reinsurance - individual or legal entity, other than a reinsurer or its employees, which initiates or carries distribution of reinsurance in return for payment;

14. Intermediary - those set out in pt. 11 and 13;

15. The main intermediary - an intermediary, a legal entity that operates distribution after obtaining authorization by ASF and credit institutions or investment firms as defined in art. 4 para. (1) pt. 1 and 2 of Regulation No. ASF 575/2013 who obtains ASF authorization for the distribution of the activity;

16. The secondary intermediary - intermediary or ancillary insurance intermediary individual or legal person registered in ASF, which operates distribution under the full responsibility of a leading intermediary or one or more companies, where applicable, credit institutions or companies investment, as defined in art. 4

para. (1) pt. 1 and 2 of Regulation No. 575/2013, which carries the distribution under full responsibility of one or several companies, as appropriate;

17. Main place of work - residence or headquarters, as appropriate, where the main business of intermediaries and auxiliary insurance intermediaries is conducted;

18. Qualified holding - direct or indirect holding of voting rights, shares or social, representing together at least 10% of the share capital of a distributor or confer at least 10% of the total voting rights in the general meeting shareholders or associates;

19. legal provisions:

a) this Act and the regulations issued by the FSA for its application, published in the Official Gazette of Romania, Part I;

b) delegated acts or regulations, regulatory standards, the application acts of implementation and other documents issued by the Commission or the Council and the European Parliament, directly applicable in Member States;

20. documentation principle - the principle that the processes carried out by distributors, including the decision, and the supervisory review conducted by ASF are substantiated by documentary evidence;

21. The principle of proportionality - principle which takes into account the nature, scale and complexity of the risks inherent in the business carried out by distributors;

22. qualified reasoning principle - the principle according to which opinions are formed and decisions are taken on the basis of set criteria and their own experience in terms of distribution activity, such as applied policies, risk culture, prudential;

23. investment product based on insurance - an insurance product that provides a value on maturity or surrender value that is exposed partly or entirely, directly or indirectly, to market fluctuations and exclude:

a) insurance products referred to in sections A and B of Annex. 1 of Law no. 237/2015;

b) life insurance contracts in which those benefits are payable only after death or incapacity caused by injury, disease or disability;

c) pension products recognized under Law no. 411/2004 on private pension funds, republished, as amended and supplemented, and Law no. 204/2006 regarding voluntary pensions, as amended and supplemented, with the main objective to provide an income in retirement and gives the participant the right to benefits under private pension legislation;

d) officially recognized occupational pension schemes falling under applicable law;

e) individual pension products, where the financial contribution is paid by the employer and the employee can not choose it or pension product or supplier;

24. reinsurer - a reinsurer within the meaning of art. 1 par. (2) pt. 45 of Law no. 237/2015 and distribution activities reinsurance under pt. 10;

25. remuneration - commission, fee, charge or other payment, including economic benefit or other benefit or incentive offered or paid for distribution activities;

26 companies - insurer, reinsurer or mixed insurer as defined in Art. 1 par. (2) pt. 56 of Law no. 237/2015, which carries out the distribution;

27. Member State of origin:

a) the Member State of residence of intermediary individual;

b) the Member State where the head office of the intermediary person or the Member State where its head office is if there is no registered office in accordance with the applicable law;

28. host Member State - Member State other than the Member State of origin where an intermediary has a branch or provides services;

29. branch - agency or permanent establishment of an intermediary without legal personality, which is located in a Member State other than the Member State of origin;

30. durable support - instrument that:

a) enables the customer to store information addressed personally so that they can later be viewed for a period of time adequate for their purpose;

b) allow accurate reproduction of the information stored.

(2) For purposes of par. (1) point. 9 and 10, the following activities are excluded as distribution activities:

a) providing occasional information in the context of another professional activity when the supplier is limited to this, not to assist the customer in entering into or performing an insurance or reinsurance;

b) management of claims of a company professionally and evaluation and adjustment / handling damage;

c) the mere provision of data and information on potential contractors by intermediaries or companies if the provider is limited to this, no to assist in the conclusion of an insurance or reinsurance;

d) the mere provision of information about insurance products and reinsurance intermediaries or companies about potential contractors, if the supplier is limited to this, without assisting to conclude a contract of insurance or reinsurance.

(3) The terms and expressions in para. (1) are supplemented by those defined by Law no. 237/2015.

## CHAPTER II

### ASF tasks and exchange of information

#### Article 4

##### General Provisions

(1) ASF performs the duties under the law and monitors the insurance products market, including auxiliary ones, marketed, distributed or sold in Romania. ASF may request the European Insurance and Occupational Pensions Authority, hereinafter referred to as EIOPA, consultancy facilitating or coordinating the **monitoring process**.

(2) ASF may reject, temporarily prohibit and / or withdraw approval or statement, where appropriate, of the main intermediaries for the activity of insurance distribution, approves changes in documents or conditions on which granted them and approve the application termination or suspension of the distribution activity, as appropriate.

(3) ASF monitors the registered brokers and supervises in compliance with the conditions that have been granted authorization or approval to key intermediaries and their financial situation, when necessary, can perform controls at their headquarters.

(4) ASF has the power to require intermediaries and ancillary insurance intermediaries documents and information necessary for the process of monitoring and surveillance, including extracts of the minutes of management meetings and committees established in connection with the distribution activity and other documents and information according to the law.

(5) ASF applies administrative sanctions to leading intermediaries and removal of secondary intermediaries registered in the registers under par. (6) when non-compliance with these legal provisions are found, according to Art. 28.

(6) The ASF establishes and maintains one or more registers in the computer system for auxiliary intermediaries and insurance intermediaries and the establishes registration criteria by its regulations.

(7) ASF shall ensure that the records referred to in para. (6) specify the names of individuals in the management of primary and secondary intermediaries who are responsible for distribution, without applying the provisions of art. 8 par. (1) to all persons working for them and performing distribution activities.

(8) the contents of registers under par. (6) also state the Member States where intermediaries are operating in accordance with the right of establishment and freedom to provide services.

(9) ASF establishes an online registration system to allow direct completion of the registration form and creates a single point of information that meets the following requirements:

a) allows quick and easy access to information;

b) is compiled and updated electronically;

c) provides identification of ASF, the competent authorities of the home Member State and other authorities.

(10) Persons whose personal data are stored in the register provided for in Article EIOPA. 5 para. (3) and are object to exchanged information, have right of access the information and the right to be duly informed, in accordance with applicable regulations.

(11) The links to every single information point or, if necessary, to register or registers established by ASF are found on EIOPA website.

(12) In compliance with art. 10 para. (2) ASF establishes and publishes mechanisms that verify and evaluate the acquisition and maintenance or updating knowledge and skills in the field of insurance intermediaries, auxiliary insurance intermediaries, including their employees, and employees of companies, according to Art. 10 para.(3) taking into account the nature of the sold products, the type of distributor, tasks and activities performed within the distributor.

(13) ASF adapts, according to its own regulations, the specific conditions regarding knowledge and skills in para. (12), depending on the specific activity of distribution and sales of products, especially for auxiliary insurance intermediaries according to the law.

(14) If necessary, ASF provides intermediaries referred to in art. 10 para. (4) means of training, development or training which meets the requirements concerning the products they're selling.

(15) FSA establishes by regulations the professional liability insurance guarantee or equivalent owned by intermediaries for ancillary insurance, given the nature of the products sold and the work done by them.

(16) ASF takes all necessary measures to protect customers against the inability of auxiliary insurance intermediaries and insurance intermediaries to transfer the premium to insurers, to transfer the amount of the claim or return premium to the contractor. These measures are referred to in art. 11 para. (4) - (7).

(17) ASF publishes on its website the following information:

a) the legal and relevant provisions of national law to be respected by brokers and auxiliary insurance intermediaries operates in Romania, under the right of establishment or freedom services, adopted in the general interest;

b) information regarding the decision to issue stricter regulations stipulated in art. 36 para. (2) a) section. (iii) and point b) sections. (i) and the rules for their application.

(18) ASF continuously updates information on national legislation protecting the general interest specified in para. (17) lit. a). This information can also be found on the website of EIOPA.

(19) ASF is the only competent authority responsible for providing information on national legislation on the general interest in terms of distribution activities carried out under the right of establishment and freedom to provide services.

(20) ASF develop or participate in developing procedures that allow customers and interested parties, especially consumer associations, to submit complaints against distributors. Procedures oblige response in all cases, whether the resolution is favorable or not.

(21) ASF may adopt, by law, additional provisions stricter than specified in Art. 16 or intervene on a case by case basis to prohibit the sale of an insurance product with a service or auxiliary product which is not insurance or as part of a package or a single contract when it can demonstrated that such practices are detrimental to consumers.

(22) ASF may adopt, by law, more strict provisions on information requirements in the head. V compliance with EU law, and publish them on its website.

(23) ASF may require distributors, under the law, stricter additional requirements regarding the matters referred to in art. 26, including:

a) prohibition or restriction of the offering or acceptance of fees, commissions or non-monetary benefits from third parties in connection with providing advice on insurance;

b) a requirement that the fees, commissions or non-monetary benefits shall be returned to the client or deducted from the fees paid by the client;

c) the obligation to provide advice mentioned in art. 27 for the sale of insurance-based investment products or certain types of such products;

d) the requirement for insurance intermediaries to assess a sufficiently large number of insurance products available in the market sufficiently diversified in terms of type and product providers, to ensure that the client's objectives can be met adequately and are not limited to insurance products issued or provided by entities having close

links with them, where insurance intermediaries inform the customer that the advice is provided independently.

(24) ASF exercises direct supervisory powers of investigation necessary in exercising and imposing penalties provided in the head. VIII in accordance with the national legal framework.

(25) ASF establishes effective mechanisms to enable and encourage reporting the information related to the violation, potential or actual, legal provisions implementing this law, taking into account at least:

a) specific procedures for receiving information and the adoption of measures based on them;

b) appropriate protection, at least against repressive or coercive measures, as necessary, for other types of discrimination or unfair treatment to employees of distributors and, if possible, to other persons reporting breaches committed within those entities;

c) protection of the identity of both the person who reports the breaches and the natural person suspected of being responsible for the infringement, in all stages of the proceedings, unless such information is required by national law in the context of further investigation or the subsequent administrative or judicial proceedings.

(26) ASF may adopt, by law, additional provisions in its regulations for violations under art. 29.

(27) Disputes between insurance customers and distributors can be resolved through alternative dispute resolution procedures.

(28) ASF establishes and updates, according to the law, its regulations, terms, payment conditions and the level of fees for authorization or approval, running, of approving the amendment of the conditions of authorization or approval or registration, of supplying information and views to others, except contractors, damaged parties and institutions or public authorities and other legal fees.

(29) ASF sets targets of interest and/ or imposes obligations on primary and secondary work intermediaries and entities organizing training, both initial and continuing vocational and professional training of distributors.

(30) ASF authorizes or approves, as appropriate, entities under par. (29) or endorses entities accredited by the ministry for adult vocational training and certifies course instructors.

(31) ASF may delegate the evaluation and the certification of competence in the initial and continuous training of distributors.

(32) ASF approves or withdraws approval of shareholders or significant direct and/or indirect leading intermediaries authorized by FSA

(33) ASF grants and withdraws approval of the management leading intermediaries authorized by the FSA or grants and withdraws the approval of persons responsible for work distribution of key intermediaries approved by ASF management, under the legislation in force and the regulations issued for its implementation.

(34) ASF shall ensure that distribution activities are managed in compliance with specific prudential norms, according to the law.

(35) ASF responds to received notices and complaints regarding activities of intermediaries.

(36) ASF applies other measures prescribed by law.



(37) ASF can always decide according to the law, modify or terminate any relief granted, if it finds that it is no longer necessary.

(38) ASF carried out according to the law, monitoring and supervision and permanent control of its premises and checking or unannounced at the premises distributors or entities which organize training courses initial and continuing vocational and professional training of distributors.

(39) If the ASF establishes additional provisions in accordance with this Law and pursuant to Art. 36 para. (2) a) ensures that the legal effects of those provisions are proportionate to consumer rights and that they are not excessive distributors, constantly monitoring the effects of these provisions to ensure their compliance.

(40) ASF refuses authorization or approval and registration in ASF where the effective exercise of supervision is hampered by laws, regulations or administrative provisions of a third country governing one or more individuals or legal entities that the insurance intermediaries, reinsurance and ancillary insurance are closely linked to, or because of difficulties related to the implementation of these acts.

(41) ASF may issue recommendations on the activity distribution key intermediaries.

(42) Can represent budget incomes for ASF:

- a) the fees referred to in para. (28), interest and penalties related;
- b) the amounts resulted from fines under Art. 28 para. (20).

## **Article 5**

### **Cooperation with EIOPA, the European Commission and other authorities**

(1) ASF immediately informs the European Commission, hereinafter EC on general difficulties faced by distributors in establishing distribution activities in third countries.

(2) ASF promptly provides the following to EIOPA:

- a) information on intermediaries and auxiliary insurance intermediaries are notified of the intention to conduct cross-border activities in accordance with Chapter. VI;
- b) the link to the ASF website

(3) The information provided in par. (2) is relevant to enable continual updating of the register developed and published by EIOPA.

(4) ASF can change the data submitted under paragraph. (2) and stored in the EIOPA register.

(5) For the proper application of this law, ASF works with and shall exchange relevant information with other competent authorities of the Member States concerning distributors and in particular:

- a) moral integrity and professional competence of distributors, both during recording, and periodically thereafter;
- b) dealers who have been subject to sanctions or measures of head. VIII.

(6) The information received by ASF par. (5) b) could lead to cancellation of distributors in the records referred to in art. 4 para. (6).

(7) As a competent authority of the home Member State competent authority of the host Member State, ASF may refer to EIOPA and may request its assistance in accordance with art. 19 of Regulation (EU) No. 1.094 / 2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority),

amending Decision No. 716/2009 / EC and repealing Decision 2009/79 / EC, in conjunction with Art. 6 para. (6) and (13) and Art. 7 para. (3), (4) and par. (12) - (16). 10/08/2018 - Derogation by Law 236/2018.

(8) Action by the FSA pursuant to Art. 7 para. (3) - (6) and par. (12) and (13) are promptly notified to the competent authority of the home Member State, EIOPA and the EC.

(9) In the event of any agreement referred to in art. 6 para. (12), ASF shall promptly notify EIOPA.

(10) In addition to Art. 4 para. (24), ASF exercises supervisory powers, including the investigation and imposing penalties provided in the head. VIII in accordance with the national legal framework in the following ways:

- a) in collaboration with other authorities;
- b) by the competent judicial authorities.

(11) In the situation provided in par. (10), ASF:

- a) cooperates with the competent authorities to ensure that those sanctions and measures have the expected effects;
- b) coordinates its actions with other competent authorities in cross border cases, ensuring that the conditions for processing data in accordance with applicable national and European legislation.

(12) ASF shall in exercising its powers, have the power to perform all of the following:

- a) ask the judicial authorities in Romania for specific information related to investigations or criminal proceedings for possible breaches of this law with the Law no. 544/2001 on free access to information of public interest, as amended and supplemented;
- b) transmit the information referred to in subparagraph a), other competent authorities and EIOPA in order to carry out its duty of cooperation under this law with the Law no. 544/2001, as amended and supplemented.

(13) ASF informs EIOPA on:

- a) administrative sanctions and measures imposed, but not published in accordance with paragraph. (10) - (12), art. 4 para. (24) and Art. 32 para. (1) including remedies against them and their results;
- b) aggregate information annually on administrative penalties and other measures imposed under paragraph. (10) - (12), art. 4 para. (24) Art. 28; c) administrative sanctions or other measures imposed and published by the FSA simultaneously with their publication.

(14) ASF transmits EC and/or EIOPA, according to national procedures, if requested, the information on the application of this law, especially those relating to the exception provided for in art. 2 para. (1).

(15) ASF transmits EC, according to national procedures, the main provisions of this law and its regulations adopted in its application.

(16) For the adoption of the provisions of art. 4 para. (22), ASF forwards EIOPA and CE the national legislation applicable.

(17) ASF can conclude cooperation agreements with authorities in third countries only if the information transmitted to the concerned authorities receive the same

level of confidentiality that ASF treat that information in Romanian according to applicable national law.

(18) ASF can inform the EC about the difficulties in applying this law and any difficulties that may occur to the detriment of distributors registered or established business in Romania.

(19) According to Art. 8, for main approved intermediaries, ASF cooperates with the National Bank of Romania.

## **ARTICLE 6**

### **ASF Powers as supervisor of the home Member State**

(1) FSA registers key intermediaries and has secondary intermediaries registered, provided that the relevant requirements under art. 4 para. (12) - (16), art. 10 and Art. 11 para. (1) - (9) are fulfilled within three months from the application date, it informs the applicant of the decision taken in the shortest time. In case of failure while operating or at their request, ASF radiates key intermediaries, secondary intermediaries has deletion and inform the authorities of the host Member States, if necessary.

2) ASF periodically reviews or regularly has the registration validity reviewed according to the law, under par. (1).

(3) Within one month from receiving the information referred to in art. 19 para. (1), ASF communicates that information to the competent authority of the host Member State.

(4) ASF informs in writing intermediaries or auxiliary insurance intermediaries mentioned in art. 19 para. (1) on the following aspects:

a) receiving information by the competent authority of the host Member State and the right to start the activity;

b) availability of information on legislative provisions similar to those in art. 4 para. (17) that are applicable in the host country by means similar to those in art. 4 para. (18) and (19), if any;

c) the need to respect the provisions of subparagraph b) to the carrying out of the activity in the host Member State, if necessary.

(5) ASF informs the competent authority of the host Member State on the changes referred to in art. 19 para. (3) as soon as possible, but no later than one month from the date of receipt.

(6) If the ASF receives the findings of a competent authority in a host Member State, regarding noncompliance with applicable law by intermediaries or auxiliary insurance intermediaries operating on its territory under the freedom to provide services, ASF:

a) assesses the information received;

b) takes appropriate steps to remedy the situation;

c) informs the competent authority of the host Member State of the measures adopted under subparagraph b).

(7) ASF sends the competent authority of the host Member State the information provided in art. 21 para. (1) within one month from receiving them from intermediaries or auxiliary insurance intermediaries unless it has reasonable grounds

to doubt the adequacy of the organizational structure or their financial situation, taking into account the activities of distribution considered.

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(8) Following confirmation by the competent authority of the host Member State ASF shall inform in writing the intermediaries or auxiliary insurance intermediaries that the information provided in art. 21 para. (1) have been received by that authority.

(9) Upon receiving information from the competent authority of the host Member State on similar legal provisions of Art. 4 para. (17) which apply in that Member State by means similar to those in art. 4 para. (18) and (19), ASF communicates this information to intermediaries, and that they can start conducting business in that Member State, considering the relevant legal provisions.

(10) If the ASF refuses the disclosure under Art. 21 para. (1) it shall document and transmit the refusal to auxiliary intermediaries or insurance intermediaries within one month from receiving complete information.

(11) ASF informs the competent authority of the host Member State as soon as possible and no later than one month after receipt of the information referred to in art. 21 para. (3).

(12) If the main place of business of intermediaries and auxiliary insurance intermediaries registered in Romania, is located in another Member State, ASF may agree with the competent authority of the host Member State that it acts as competent authority of the State Member of origin of the provisions in the head. IV, V, VII and VIII and related tasks. In this case, ASF shall promptly notify the intermediary concerned about the agreement.

(13) If the competent authority shall receive the findings of the host Member State that has no similar responsibility with the ones under art. 7 para. (11), ASF:

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- a) evaluates the information received;
- b) shall, where appropriate and as soon as possible, take appropriate measures to remedy the situation;
- c) informs the competent authority of the host Member State of the measures referred to in subparagraph b).

## **Article 7**

### **Powers of ASF as supervisor of the host Member State**

(1) If the ASF is notified of the intention of intermediaries or auxiliary insurance intermediaries to conduct business in Romania under the freedom to provide services, ASF confirms receiving information at once.

(2) ASF may require to intermediaries or auxiliary insurance intermediaries that operate distribution in Romania under the freedom to provide services , information and documents necessary to verify from the perspective of protecting customers, and of the intermediaries acting in compliance with applicable national legislation .

(3) If it finds that an intermediary or an insurance intermediary auxiliary operating in Romania under the freedom to provide services violates its obligations according to

the law, ASF transmits these findings to the competent authority of the home Member State, following to be informed of the measures taken by that authority.  
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(4) If, after the measures taken by the competent authority of the Member State of origin or if those measures prove to be inadequate or have not been adopted, intermediaries or auxiliary insurance intermediaries who operate in Romania under the right of establishment and freedom to provide services continue to act in a manner prejudicial to the interests of consumers on a large scale or orderly functioning of markets for insurance and reinsurance ASF may, after informing the competent authority of the home Member State, impose appropriate measures to prevent further irregularities, including, insofar as is strictly necessary, prohibiting measures, denying the intermediaries the possibility to start a new business in Romania, both based on the right of establishment and freedom to provide services.  
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(5) If immediate action to protect consumer rights are necessary, ASF shall, according to the law, adopt adequate and non-discriminatory measures to prevent or penalize irregularities committed in Romania by intermediaries and insurance intermediary services:

a) exception from par. (3), (4),. 5 para. (7) and art. 6 para. (7), regarding the freedom to provide services;

b) notwithstanding the provisions of par. (4) and (13), art. 5 para. (7) and art. 6 para. (13) and provided the Member State of origin has not taken equivalent measures or has taken inadequate measures for the right of establishment.

(6) The measures provided in par. (5) include administrative sanctions and measures under Art. 28 and for prohibiting intermediaries or auxiliary insurance intermediaries to do new business in Romania.

(7) The measures adopted by ASF under par. (3) - (6), para. (12) and (13) are sent documented to concerned auxiliary intermediaries or insurance intermediaries.

(8) If the ASF receives similar information referred to in Art. 21 para. (1) by a competent authority of a Member State of origin, it:

a) acknowledges receipt without delay;

b) communicates the laws referred to in art. 4 para. (17) applicable in Romania within one month to the competent authority of the home Member State, in the manner prescribed in art. 4 para. (18) and (19) .

(9) ASF receives from the competent authority of the home Member State change notification regarding the information received under paragraph. (8).

(10) If the main place of business of intermediaries and auxiliary insurance intermediaries from another Member State is located in Romania, and not in the Member State of origin, ASF may agree with the competent authority of the home Member State to act as and such competent authority of the Member State of origin of the provisions in the head. IV, V, VII and VIII.

(11) To ensure that the activities or services offered by the branch in Romania fulfill their obligations under the head. V and VII and in measures adopted pursuant thereto, ASF may

a) examine ways of establishing a branch;

b) request changes necessary to enforce obligations and measures.

(12) If the ASF found that intermediaries or auxiliary insurance intermediaries operating in Romania through a branch are offending head. V and VII, the Community may adopt measures according to the law.

(13) If the ASF found that intermediaries or auxiliary insurance intermediaries operating in Romania through a branch violates the obligations under the law, other than those referred to in the head. V and VII, it shall forward the findings to the competent authority of the Member State of origin.

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(14) ASF shall take appropriate and non-appropriate art. 28 para. (6) to penalize irregularities committed in Romania contrary to the legal provisions referred to in art. 4 para. (17) insofar as is strictly necessary. In this case, ASF prohibits intermediaries or auxiliary insurance intermediaries to do new business in Romania.

(15) ASF may take appropriate measures to prevent distributors of insurance in other Member States to operate in Romania, if:

a) the activity in question is directed wholly or mostly to Romania with the sole purpose of evading the law that would be applicable if it had its registered office in Romania;

b) the activity would be a serious threat to the proper functioning of the insurance and reinsurance in Romania in terms of consumer protection.

(16) In the case under para. (15), ASF may, after informing the competent authority of the home Member State, take appropriate measures regarding distributors of insurance to protect consumer rights in Romania and the freedom to provide services.

### **Chapter III**

#### **Article 8**

#### **Registration**

##### **Registration conditions as the primary and secondary intermediary**

(1) In order to carry out distribution, primary and secondary intermediaries are recorded in the registers referred to in Article ASF. 4 para. (6).

(2) The registration under par. (1) shall be:

a) following the granting of authorization or approval for operation by the ASF, if key intermediaries;

b) the intermediaries leading insurers or under the responsibility of which it acts, in the case of secondary intermediaries.

(3) Companies and their employees are exempted from the provisions of par. (1).

(4) Notwithstanding the provisions of paragraph. (1), companies and main intermediaries record secondary intermediaries under the supervision ASF and ensure the conditions for registration and the requirements laid down in Art. 4 para. (12) - (16), art. Article 9. (2) c) art. 10 and Art. 11 para. (1) - (9).

(5) companies and main intermediaries maintain their records of legal entities and individual persons engaged in distribution in the computerized system, in order to archive all changes.

## **Article 9**

### **Conditions of registration**

(1) To obtain and maintain operating authorization or approval, respectively, for registering and maintaining ASF records as main or secondary intermediaries, they comply, where applicable, with the provisions of par. (2) and (3), art. 10, art. 11 and the regulations issued by ASF in their application.

Compliance with these provisions and regulations is a condition for maintaining registered with the ASF

(2) In order to obtain authorization, key intermediaries transmit ASF the following information:

- a) the identity of the shareholders or members that have qualified holdings and value of those;
- b) the persons who have close links with that intermediary;
- c) if the holdings or close links referred to in subparagraph a) and b) do not prevent the effective exercise of supervision by the FSA;
- d) existence of minimum capital subscribed and paid in cash whose value can not be less than 150,000 lei, the amount of which is updated by the law;
- e) other information according to the law.

(3) Main intermediaries authorized by the ASF and secondary intermediaries meet the conditions and requirements for providing the ASF, major companies or intermediaries, as appropriate, information provided in par. (2) a) - c) and e).

(4) Changes in the information provided under paragraph. (2) and (3) where the main intermediaries are transmitted to ASF immediately and without undue delay for approval pursuant to Art. 4 para. (2).

(5) The intermediaries authorized by ASF can merge or split under Law no. 31/1990, republished, as amended and supplemented, and shall notify the FSA that intention. Intermediaries resulting from the merge or division may work only after obtaining approval or written consent of the ASF, as appropriate.

## **CHAPTER IV**

### **Operation**

#### **Article 10**

#### **Requirements of professional competence and moral integrity**

(1) Distributors and employees performing in distribution companies meet the requirements of professional competence necessary to fulfill the duties and responsibilities properly.

(2) Access to distribution activities for intermediaries is achieved by meeting the criteria and compliance requirements of initial training established by regulations issued under the law, the ASF intermediaries, their employees and employees of companies meet the requirements of development and continuous training for maintain an adequate level of performance to both fulfill the role and the relevant market.

(3) The requirements of para. (2) for maintaining the level of performance is deemed to be met based on at least 15 hours of annual training and development, according to regulations issued by the ASF

(4) In the cases referred to in art. 8 par. (4) and for employees of companies engaged in distribution, companies or main intermediaries verify the compliance with requirements of professional competence of its employees and intermediaries secondary obligations under par. (1).

(4) Relevant individuals from the management structure of a company, an intermediary or an insurance intermediary auxiliary engaged in distribution and responsible for the distribution of insurance and / or reinsurance, and other persons in these entities directly involved in the distribution:

a) demonstrate knowledge and skills required to carry out their responsibilities;

b) meet the following requirements probity moral:

(i) no criminal record or an equivalent nationally in terms of crimes against property or other crimes specific to economic / financial, money laundering and terrorist financing offenses under tax law, other offenses under company law, bankruptcy, insolvency;

(ii) declaring bankruptcy at an earlier time, unless the situation is rehabilitated in accordance with national legislation;

(iii) other requirements according to the regulations issued under the law, the ASF (6) Para. (5) b) be applied to the persons responsible for the distribution activities of the auxiliary insurance intermediaries .

(7) The intermediaries and ancillary insurance intermediaries document the fulfillment of relevant professional competence requirements set out in the annex part of this law.

(8) Distributors establish written policies within the governance system in place to ascertain the requirements of paragraph.(5) b) the moral integrity of its employees and secondary intermediaries during collaboration with them.

(9) companies and major intermediaries are responsible for all acts or omissions of their employees and secondary intermediaries in conducting distribution.

(10) Activity of intermediaries and auxiliary insurance intermediaries is allowed under the following conditions:

a) They distribute insurance or reinsurance products derived exclusively from authorized companies under Law no. 237/2015 or working in Romania under the freedom to provide services or the right of establishment, under the law;

b) they collaborate exclusively with intermediaries registered under this Law or working in Romania under the freedom to provide services or the right of establishment, except as provided in Art. 2 para. (1) under the law.

## **Article 11**

### **The organizational requirements and reporting**

(1) Intermediaries have insurance professional indemnity valid throughout the European Union or other equivalent collateral liability arising from professional negligence in accordance with legal provisions, which rises to at least the lei



equivalent of the amount of EUR 1,250,000 per claim and at least the equivalent in RON of EUR 1,850,000 per year aggregate for all claims.

(2) The intermediaries are exempted from the provisions of paragraphs. (1) if:  
a) the insurance or guarantee is already provided by a company or other entity on whose behalf the intermediary acts or is authorized to act;  
b) the firm or entity referred to under a) assume full responsibility for the intermediary's actions.

(3) Auxiliary insurance intermediaries hold professional indemnity insurance or other security equivalent to a level fixed in accordance with the law and art. 4 para. (15). The provision referred to in paragraph. (2) applies accordingly.

(4) Insurance premiums paid by customers through intermediaries or auxiliary insurance intermediaries are considered transferred to the insurer at the time of payment, and compensation or insured amounts paid by the insurer through intermediaries shall be considered to have been passed on to customers only upon receipt of those amounts or compensation.

(5) cash receipts and payments on behalf or on account of clients by intermediaries or auxiliary insurance intermediaries are organized, recorded and managed separately, distinguishable from other accounts that conduct current activity, transfer between accounts being possible only for the remuneration due from activity distribution. The amounts provided in par. (4) are not considered as belonging to the heritage of auxiliary intermediaries or insurance intermediaries, they are not used to make payments to creditors other than those referred to in paragraph. (4) and can not be subject to any claims from creditors, including in the case of bankruptcy or winding up.

(6) In order to maintain at all times the financial capacity of insurers, according to legal requirements, they allow direct collection of the first only by intermediaries and insurance intermediaries ancillary legal, financially stable, according to FSA regulations.

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(7) Notwithstanding the provisions of paragraph. (6), insurers allow the direct collection of the first and intermediaries are the intermediaries of the auxiliary security guarantees for the insurer, respectively.

(8) To ensure that the requirements of Art. 4 para. (12) - (14) and Art. 10 companies approve, implement and regularly review appropriate internal policies and procedures.

(9) the system of governance, the company established a function to ensure proper application of the procedures laid down in para. (8), approved by their management. The person responsible for the position is available on ASF's request

(10) companies establish, maintain and continually update a register of documents on the application of art. 4 para. (12) - (14) and Art. 10.

(11) companies and key intermediaries used only distribution services provided by:

- a) insurance intermediaries and auxiliary intermediaries registered in ASF;
- b) intermediaries referred to in Art. 2 para. (1).

(12) The intermediaries and auxiliary insurance intermediaries transmit ASF, where appropriate, annual financial statements, reports, documents and information required under regulations issued by ASF.

(13) The intermediaries and auxiliary insurance intermediaries transmit ASF documents required under Art. 4 para. (4).

(14) Main intermediaries ensures the continuity of the management of business administration.

(15) Failure to apply the recommendations set out in art. 4 para. (41) is documented and sent to ASF by the date specified in those recommendations.

## **CHAPTER V**

### **Information requirements and conduct of the activity**

#### **Article 12**

##### **The principles and general information**

(1) Insurance Distributors always act honestly, fairly and professionally in order to best meet clients' interests.

(2) Notwithstanding the provisions of Title I of Law no. 363/2007 on fighting against unfair practices of traders with customers and harmonizing regulations with European legislation on consumer protection, as amended and supplemented, related information subject to this law, including marketing communications that are addressed to clients or potential clients of the insurance distributors are fair, clear and not misleading and identifiable.

(3) Insurance Distributors are prohibited from being paid to remunerate their staff and to assess its performance in a manner inconsistent with the obligation to act in accordance with the best interests of customers, according to legal provisions.

(4) Insurance distributors are prohibited from adopting measures which, through compensation, sales objectives or other means, are an incentive for themselves or for their staff by recommending customers a product if they could provide another insurance product that would better meet the needs of those customers.

(5) auxiliary intermediaries and insurance intermediaries are forbidden to advertise or pay advertising for products, activities or actions of any kind of companies.

(6) Prior to the conclusion of an insurance contract, insurance and / or insurance intermediaries customers timely submit the following information: a) for insurers and intermediaries:

(i) the identity and address them;

(ii) the capacity of intermediary or insurer held, if applicable;

(iii) if it provides advice on sold insurance products;

(iv) the procedures provided for in art. 4 para. (20) and information about extrajudicial complaints procedures and remedies provided for in art. 4 para. (27);

b) if intermediaries:

(i) the register in which they are enrolled and methods that can verify this;

(ii) whether they are client acting for and on behalf of the insurer.

(7) Para. (6) and art. 13 para. (1) d) shall apply accordingly to ancillary insurance intermediaries.

### **Article 13**

#### **Information on conflicts of interest**

- (1) Before concluding an insurance contract, insurance intermediaries shall, in compliance with art. 15, timely customer the following information:
- a) qualified holdings held in insurers;
  - b) qualified holdings held by insurers or parent companies of insurers under intermediaries;
  - c) in connection with the proposed contract or contract for advising:
    - (i) if advises based on a fair and personal analysis;
    - (ii) if it has a contractual obligation to work in the retail sector insurance exclusively with one or more insurers, in which case the insurers concerned communicate the name;
    - (iii) the absence of advice and the absence of the requirement set out in section. (I) and (ii), in which case the name of the insurer to the common intermediary that may and does conduct;
  - d) the nature of remuneration in respect to an insurance contract;
  - e) if, in terms of the insurance contract, it works:
    - (i) based on a fee, which is the remuneration paid directly by the consumer;
    - (ii) based on a commission of any kind, as remuneration included in the insurance premium;
    - (iii) on any other type of remuneration, including benefits of every kind, offered or given in connection with the insurance contract; or
    - (iv) a combination of kinds of considerations referred to in section. (i) - (iii).
- (2) Before concluding an insurance contract, insurers duly inform the customers about the nature of the remuneration of their employees in connection with the insurance contract.
- (3) For each of the payments made by customers under the insurance contract after its conclusion, other than those pertaining to the premiums and payments scheduled, insurers and insurance intermediaries shall disclose information provided in this article.
- (4) If the fees are paid directly by customers, insurance intermediaries to inform customers about their value or, if this is not possible, on the method of calculation of fees.
- (5) It is forbidden to accept or receive fees, commissions or any monetary benefits paid or provided distributors or non-monetary security by third parties or persons acting on their behalf in connection with the distribution of insurance products. The third means a person other than companies, customers and brokers.

### **Article 14**

#### **Information for advice**

- (1) Prior to the conclusion of insurance contracts, insurance distributors:
- a) assess the requirements and needs of customers, based on information obtained from them, so the proposed contracts are consistent therewith;

b) provide clients with objective information on the proposed insurance product in a comprehensible form to allow them to take an informed decision.

(2) Where advice is provided before concluding a specific contract, insurance distributors make recommendations for customers in documenting why a particular product is suitable to requirements and customer needs.

(3) The obligations under paragraph. (1) and (2) are adapted depending on the complexity of the proposed insurance product and the type of client.

(4) In the case referred to in art. 13 para. (1) c) section. (i), advice is provided by analyzing a sufficient number of insurance contracts available on the market, so personalized recommendations to be made on the basis of professional criteria and the contract of insurance to best meet customer needs.

(5) Notwithstanding the provisions of art. 107 of Law no. 237/2015, before entering a contract, whether or not to give advice and product assurance whether or not part of a package in accordance with Art. 4 para. (21) and Art. 16, dealer insurance provisions para. (1) b) and para. (3).

(6) The information provided in par. (5) is transmitted using a standardized information document on the insurance product, according to the law, referred to as PID, where the product is part of the insurance classes set out in Sections A and B of Annex. 1 of Law no. 237/2015. PID is transmitted on paper or on another durable medium.

(7) PID is developed by the creator of life insurance product and has the following features:

a) it is brief and self-contained;

b) it is produced and constructed using type sizes to be clearly legible and easy to read;

c) is understandable even if the original color is printed or photocopied in black and white;

d) it is written in the official language used in the Member State where the insurance product is offered;

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e) notwithstanding point d) it is written in another language, under an agreement between the consumer and the distributor;

f) is structured accurately and without confusion;

g) contains the title "of information on the insurance product" at the top of the first page;

h) includes the statement that pre-contractual and contractual information provided in other documents are complete.

(8) PID is provided with the information required to be given under the law provided that the requirements under par. (7).

(9) PID contains the following information:

a) type of insurance;

b) a summary of the insurance cover comprising:

(i) the main risk;

(ii) the provided sum;

(iii) geographical coverage, if any;

(iv) the summary of risks excluded, if any;

c) a first payment methods and frequency of payments;

- d) the main exclusions for which there may be requests for compensation;
- e) obligations at the beginning of the contract;
- f) obligations during the contract;
- g) if the request for compensation requirements;
- h) duration of the contract, including start and end date thereof;
- i) termination methods.

## **Article 15**

### **Method of transmitting information**

(1) The information provided in accordance with Art. 4 para. (23) Art. 12 para. (6) art. 13, 14 and art. 23 para. (1) and (2),. 26 and Art. 36 para. (2) a) section. (iii) and point b) sections.(i) transmitted customers:

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a) On paper;

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b) clearly and precisely, in a manner to be accessible to them;

c) one of the following official languages:

(i) the Member State where the risk is situated;

(ii) the Member State of the commitment;

(iii) agreed upon by the parties;

d) free.

(2) Notwithstanding the provisions of paragraph. (1) a) that information may be provided to customers using one of the following media:

a) a durable medium other than paper if the conditions set out in par. (4);

b) a site if the conditions set out in par. (5).

(3) Where the information is provided to the customer par. (2) he is available on request and free of charge, a copy paper.

(4) The conditions for providing information under paragraph. (1) using a durable medium other than paper are:

a) the method of delivery is appropriate to the context of the business conducted between insurance vendors and customers;

b) enabling customers to choose between information on paper and on another durable medium, they are choosing the latter.

(5) The information under par. (1) is provided through a website if it personally addresses the customers or all the following conditions are met:

a) the method of delivery is appropriate in the context of the business conducted between security vendors and customers;

b) the agreement of the customer;

c) be sent to customers electronically, website address and where they can access information;

d) ensure that the information remains accessible on the site throughout the period which is reasonably necessary for the client to review.

(6) For the purposes of paragraph. (4) and (5) providing information is considered to be adequate if there is evidence that those customers have access to the internet

regularly. Providing the customer an e-mail for the purpose of that activity is considered such proof.

(7) In the case of telephone selling, the information provided to customers before concluding the contract, including PID, are provided in accordance with the national laws and the European Union directly applicable to the distance marketing of consumer financial services.

(8) In the situation provided in par. (7) customers opt to obtain preliminary information on a durable medium other than paper, in accordance with paragraph. (4) they are provided by distributors of insurance under par. (1) or (2) immediately after the contract of insurance.

## **Article 16**

### **Information on the sale combined**

(1) When an insurance product offered with a service or by-product that is not insured, within a package or the same agreement, the distributors of insurance inform customers about the possibility of buying separate different components. If so, insurance distributors provide an adequate description of the various components of the agreement or package and separate records of costs and expenses for each component.

(2) In the circumstances referred to in para. (1) when risk or insurance coverage resulting from such an agreement or package are different from those associated to components separately, distributors of Insurance provide an adequate description of the various components of the agreement or package and how the interaction between them changes the risk or insurance coverage.

(3) When an insurance product or service is an auxiliary that is not insured, within a package or the same agreement, the distributors of insurance offer customers the opportunity to buy goods or services separately.

(4) an auxiliary insurance product is excluded from the provisions of par. (3) :

a) an investment service or activity as defined under the Law on Markets in Financial Instruments;

b) a credit agreement as defined under art. 3 pt. 3 of the Government Emergency Ordinance no. 52/2016 on credit agreements for consumers to real estate, as well as amending and supplementing Government Emergency Ordinance no. 50/2010 on consumer credit;

c) a payment account as defined under art. 4 letter g) of the Law no. 258/2017 on the comparability of accounts related payments, change payment accounts and payment accounts with access to basic services. (5) In the cases under par. (1) and (3), distributors of insurance specify requirements and customer needs related to insurance products that are part of the overall package or the same agreement.

(6) This article shall not prevent the distribution of insurance products that provide coverage for various risks, hereinafter called multirisk insurance policies.

## **Article 17**

### **Supervisory review process and internal governance of product**

(1) Prior to the sale or distribution to customers of insurance products, insurers and main intermediaries that create such products maintain, implement and review an approval process:

- a) each product suitable proportion and nature thereof;
- b) significant adjustments to existing products.

(2) the approval provided for in paragraph. (1) is satisfied:

- a) identifying a target market for each product;
- b) the relevant risk assessment related to the target market;
- c) consistent with the expected distribution strategy: the market- identified target;

target;

d) includes reasonable steps to ensure the distribution of the insurance product market identified target.

(3) Insurers understand and regularly review the insurance products offered or sold, given the events that may significantly affect the potential risk associated to market- identified target, assessing at least the following:

- a) whether the product continues to comply with market needs identified target ;
- b) if the expected distribution strategy is still appropriate.

(4) Insurers and intermediaries create insurance products available to distributors all appropriate information on the insurance product and the product approval process, including market- identified target.

(5) Insurance distributors that provide advice on insurance products created by other vendors or propose such products, put in place appropriate mechanisms to obtain the information under par. (4) and to understand the characteristics and the target market identified for each insurance product.

(6) Policies, processes and mechanisms referred to in this Article shall not affect the requirements of this Act, including those relating to publication, adequacy and properly identify and manage conflicts of interest and incentives.

(7) insurance products which are to engage major risks are exempted from this article.

## **Article 18**

### **Exceptions and flexibility clause**

(1) Insurance distributors who distribute activities of major risks insurance are exempt from disclosure under Art. 12 para. (6) art. 13 and 14.

(2) insurance distributors are exempt from providing the information referred to in art. 4 para. (23) Art. 23 para. (1) and (2),. 26, 27 and art. 36 para. (2) a) section. (iii) and point b) sections. (i) by a professional client as defined under the Law on Markets in Financial Instruments.

(3) See referred to in Art. 14 para. (2) is provided on the sale of certain types of insurance products, in accordance with the law.

(4) Where distributors of insurance are responsible for providing products from statutory occupational pension and an employee becomes a member of such a

scheme without having taken individually the decision to enroll, the employee concerned shall be given all the information that is referred to in this chapter immediately after submission to the regime.

**CHAPTER VI**  
**Freedom to provide services and right of establishment**  
**SECTION 1**  
**Freedom to provide services**  
**ARTICLE 19**  
**Work in other member states**

(1) intermediaries or auxiliary insurance intermediaries registered ASF, seeking to establish business in the territory of another State Member, communicate ASF the following information:

- a) name / address and, if applicable, the registration number from the relevant register;
- b) the Member State in which it intends to operate;
- c) the category thereof, and, if appropriate, the name of the company represented;
- d) the relevant classes of insurance, if applicable;
- e) other information, according to regulations issued by the ASF

(2) intermediaries under par. (1) can start their activity in the Member State concerned of receiving the information referred to in art. 6 para. (4).

(3) modify the information under par. (1) shall notify the FSA at least one month before implementing the change.

**Article 20**  
**Activity in Romania**

(1) intermediaries or auxiliary insurance intermediaries who reside or, where appropriate, with registered office in another Member State intending to pursue business in Romania comply with applicable national law.

(2) The intermediaries provided in par. (1) are entered in a register of ASF and provide information and documents required under art. 7 para. (2).

**Section 2**  
**Right of establishment**  
**ARTICLE 21**  
**Activity in other Member States**

(1) Intermediaries or auxiliary insurance intermediaries intending to conduct business, under the right of establishment by setting up a branch or a permanent presence in other Member States, communicate ASF at least the following information :

- a) the data referred to in art. 19 para. (1);
- b) address of the host Member State from which documents may be obtained;



c) the names of persons responsible for management of the branch or permanent presence, together with documentation that the requirements of professional competence and moral integrity;

d) the organizational structure of the branch or permanent presence, if necessary.

(2) If, within one month after the information referred to in art. 6 para. (8) insurance intermediaries, reinsurance and insurance auxiliary receive no communication, they may establish the branch and start business in the host Member State.

(3) In case of modifications of the information under par. (1) the FSA shall be notified at least one month before implementation.

## **ARTICLE 22**

### **The activity in Romania**

(1) The permanent presence of an intermediary in Romania which is equivalent to a branch is treated as a branch, unless the intermediaries of security, reinsurance and insurance auxiliary set such presence in legal under a different legal form.

(2) Verifying the identity of intermediaries under par. (1) is done by consulting the ASF register.

## **Section 3 of the Common Provisions**

### **Article 23**

#### **Additional requirements**

(1) When concluding insurance contracts with customers who are habitually residents of or established in Romania, including the case of art. 18 para.(3), all insurance intermediaries and insurers, including those operating under the right of establishment or the freedom to provide services, shall comply with applicable legal provisions in Romania, including those referred to in art. 4 para. (22).

(2) When concluding insurance contracts with customers who are habitually resident or established in another Member State, all insurance intermediaries and insurers operating in that Member State under the right of establishment and freedom to provide services comply with legislation applicable in that Member State, including the following:

a) the competent authority of the host Member State imposes similar requirements specified in art. 4 para. (22) and Art. 18 para. (3) to distributors of insurance;

b) the competent authority of the host Member State does not use similar derogation under Art. 27 para. (8), intermediaries and insurer.

(3) The intermediaries and auxiliary insurance intermediaries operating in Romania can promote their products and services through all channels of communication, in compliance with art. 17 para. (2) and national legislation regarding the form and content of advertising means.

## **CHAPTER VII**

### **Additional requirements for insurance-based investment products**

#### **Article 24**

##### **Scope**

This chapter provides additional requirements to those referred to in art. 12 para. (1) - (6), 13 and 14, when the insurance distribution refers to the sale of insurance-based investment products by:

- a) insurance intermediaries;
- b) insurers.

#### **Article 25**

##### **Conflicts of interest**

(1) Without prejudice to art. 12 para. (1) - (5), insurance intermediaries or insurers that distribute investment products based insurance shall maintain and organizational and administrative measures effective:

- a) which are taking reasonable steps to ensure that the interests of its clients affected by conflict interest, under paragraph. (2) - (4);
- b) be proportionate to the activities, insurance products sold and the distributor type.

(2) Insurance intermediaries and insurers take all necessary steps to identify conflicts of interest that arise in the course of carrying on insurance distribution between clients and:

- a) insurance intermediaries and insurers;
- b) managers and employees of insurance intermediaries and insurers;
- c) other persons related directly or indirectly by insurance intermediaries and insurers through a control relationship;
- d) other customers.

(3) If the measures referred to in paragraph. (1) are sufficient to ensure that, accordingly, the risk of prejudice to the client's interests is avoided, insurance intermediaries or insurers clearly communicate to customer in proper time before the insurance contract, the nature or sources of conflicts interest.

(4) The information provided in par. (3) notwithstanding the provisions of Art. 15 para. (1), shall be in compliance with the following conditions:

- a) be presented in a durable medium;
- b) contain sufficient detail, given the nature and characteristics of the client, to enable it to make informed choices regarding insurance distribution activities in the context of which the conflict of interest.

## **Article 26**

### **Informing customers**

(1) Without prejudice to art. 12 para. (6) and Art. 13 para. (1) and (4), customers and potential customers are informed in proper time before a contract is concluded on:

a) appropriate information on the distribution of insurance-based investment products;

b) costs and associated costs.

(2) The information under par. (1) include at least the following:

a) insurance intermediaries or insurance option to provide the client with a periodical assessment of the suitability recommended that customer products, according to art. 27, where it advises;

b) appropriate recommendations and warnings of the risks associated with these products or specific investment strategies proposed;

c) costs and associated costs, including:

(i) the cost of advice, if any;

(ii) the cost of the product recommended or offered for sale to customer;

(iii) the method of payment;

(iv) possible payments in relation to third-parties.

(3) Information on costs and expenses that are not caused by the realization of the underlying market risk are presented in aggregate form to enable the client to understand what the cumulative effect on the overall cost is and return on investment. On customer request, a breakdown of costs and expenses is communicated.

(4) Where appropriate, the information referred to in paragraph. (3) customer supplied regularly, at least annually throughout the life cycle of the investment.

(5) The information under par. (1) - (4) is transmitted in a comprehensible form so that customers or potential customers are able to understand the nature and risks of the product offered and to take investment decisions on an informed basis.

(6) Without prejudice to art. 13 para. (1) d) and e), para. (3) and (5) shall be deemed to insurance intermediaries or insurers met the requirements of Art. 12 para. (1), Art. 25 para. (1) or paragraph. (2) - (4) if they pay or are paid any fee or commission granted or are granted non-pecuniary benefits in connection with the distribution of an investment product based on insurance or ancillary service to or from any part, except the client or a duly authorized agent, only the provisions of paragraphs. (7).

(7) Para. (6) shall apply only if the payment or benefit that:

a) no relevant negative effects on quality of service provided to the customer;

b) shall not prevent insurance intermediaries or insurers to act honestly, fairly and professionally in the best interest of customers.

## **Article 27**

### **Assessment of suitability and appropriateness and reporting to clients**

(1) Without prejudice to art. 14 para. (1) and (2) when providing advice on investment products based on insurance, insurance intermediaries or insurers require customers or potential customers the following information:

a) knowledge and experience in the investment field relevant to the type of product or service ;

b) financial situation, including the ability to incur losses;

c) investment objectives, including risk tolerance.

(2) Based on information provided in par. (1) insurance intermediaries or insurers are able to recommend suitable products and corresponding, in particular, risk tolerance and ability to incur losses of customers or potential customers.

(3) If the insurance intermediaries or insurers offering investment advice recommending a package of services or products, combined in accordance with art. 4 para. (21) and Art. 16, the combined package the customer is generally suitable.

(4) Notwithstanding the provisions of art. 14 para. (1) and (2) insurance intermediaries or insurance when insurance distribution activities relating to sales without giving advice other than those referred to in paragraph. (1) and (2) requires the client or potential client information about his knowledge and personal experience in the investment field relevant to the specific type of product or service offered or requested.

(5) Based on information provided in par. (4) insurance intermediaries or insurers assess whether the service or product is appropriate customers. For packages of services or products, combined in accordance with art. 16, by this evaluation analyze whether the corresponding packet is generally combined client.

(6) If the insurance intermediaries or insurers believe, based on information received in accordance with paragraph. (4) and (5) that the product is inadequate, they warn that to customers or potential customers.

(7) In case of failure of sending information in para. (4) and (5) or the provision of insufficient information regarding their knowledge and experience, insurance intermediaries or insurers warn customers or potential customers on being unable to determine whether the concerned product is appropriate for them.

(8) Without prejudice to art. 14 para. (1) and (2) when no advice about insurance-based investment products, insurance intermediaries or insurers engaged in insurance distribution in Romania are exempt from the provisions of par. (4) - (7) and art. 36 para. (2) b) pts. (ii) and (iii) if all the following conditions are met:

a) activities aimed at one of the following investment products based on insurance:

(i) contracts involving exposure investments only for financial instruments found to be complex under the law on markets in financial instruments and do not include a structure that makes it difficult to understand the client the risks involved;

(ii) other insurance-based investments that are not complex in this paragraph;

b) distribution of insurance activity is conducted on the initiative of customers or potential customers;

c) customers or potential customers are clearly informed of the fact that:

(i) in respect to that activity distribution of insurance, insurance intermediaries and insurers are exempt from the obligation to assess whether the investment product based on security or insurance distribution activities performed or provided adequate;

(ii) lack the protection of the relevant rules on professional conduct;

d) insurance intermediaries or insurers fulfill their obligations under Art. 25.

- (9) Insurance intermediaries or insurers maintain a record that includes the document or documents agreed between them and their clients, stating:
- a) the rights and obligations of the parties with the opportunity to mention by reference to other documents or legal texts, if it deems necessary;
  - b) the conditions under which they provide services to clients.
- (10) Insurance intermediaries or insurers provide to customers adequate reports on the service provided in a durable medium, including:
- a) periodic communications to the customer, taking into account the type and complexity of investment products based insurance involved and nature of customer service ;
  - b) costs associated with the transactions and services undertaken on behalf of clients as appropriate.
- (11) When providing advice on an investment product based on insurance, insurance intermediaries or insurers within Articles. 15 para. (1) - (4) and provides customers before concluding the contract on a durable medium suitability statement stating advising and how it match your preferences, goals and other characteristics of clients.
- (12) If the contract is concluded through a means of distance communication which preclude such prior declaration of suitability insurance intermediaries or insurers may provide that statement in a durable medium immediately after the client bind in under a contract, fulfilling the following conditions:
- a) customers are willing to receive that statement after the contract without undue delay;
  - b) customers were informed of the option to delay the contract, to receive prior declaration.
- (13) If the insurance intermediaries or insurers inform customers on achieving regular assessment of the adequacy reports referred to in para. (10) contain an updated statement on how the insurance-based investment product match your preferences, goals and other characteristics of clients.

**CHAPTER VIII**  
**LIABILITIES AND SANCTIONS**  
**Article 28**

**Administrative sanctions and measures**

- (1) The offense if, under the conditions in which they were committed, not an offense under criminal law, the following facts:
- a) failure of this law, of acts or regulations delegated regulatory technical standards and those of implementation and of other documents issued by the Commission or Council and the European Parliament directly applicable in the Member States, of legal provisions and individual acts that ASF issued by distributors, by persons in charge of the distribution activity and by staff members directly involved in the activities of distribution;
  - b) the main intermediaries' failure to require ASF authorized approval under art. 9 for significant direct and / or indirect shareholders / associates, and for people in their management, according to the law;

c) non-compliance by distributors, by persons belonging to the management responsible for distribution activity and by staff members directly involved in the activities of distribution provisions on the activity referred to in art. 10:11 par. (1) - (12) and (15) and the law;

d) violation by ASF authorized intermediaries of the main obligation to maintain the minimum capital stipulated in Article 9. (2) d);

e) violation by distributors ASF of obligations regarding the transmission of information and documents and reports in accordance to art. 11 para. (13);

f) failure by key intermediaries and the people who are part of their management and responsible for distribution activity, by staff members directly involved in the activities of the distribution conditions imposed on authorization / approval according to Art. 9. (1), (2) and (4) and change documents that have been granted authorization / approval ASF without requiring FSA approval / opinion;

g) failure by distributors of rules of professional conduct and reporting requirements under art. 12-17 and art. 18 para. (3) and the legal provisions in pursuance of Article. 4 para. (21) and (22);

h) failure by insurers and insurance intermediaries of rules of professional conduct and reporting requirements under art. 12-17 and art. 18 para. (3) and additional requirements under Art. 24-27 in the distribution of insurance-based investment products, as well as legislation in the application of art. 4 para. (21) - (23);

i) failure by distributors of art. 35 para. (2) and (5);

j) unlawfully preventing the exercise of rights conferred by ASF law and unjustified refusal of any person to respond to ASF in the exercise of its duties under the law;

k) failure by distributors, by persons responsible for the management and distribution activity, by staff members directly involved in the activities, of distribution measures established by the authorization or approval, supervision, regulation and control or following;

l) accepting or receiving fees, commissions or other benefits provided for in art. 13 para. (5) by the distributors;

m) failure by the entities organizing training courses, their management and the lecturers, according to art. 4 para. (12) and (29) of the law;

n) failure by the distributors of professional requirements on the activity of distribution under this law and the law;

o) breach of the obligation under Art. 35 para. (7) companies and main intermediaries that distribute insurance policies;

p) failure by main intermediaries to fulfil the obligation under Art. 11 para. (14);

r) failure by companies and main intermediaries to fulfil the obligation under Art. 35 para. (8).

(2) The offenses referred to in para. (1) a) to g), i) -l), points n) and r) by leading companies or intermediaries, as appropriate, shall be punished with the following sanctions:

a) written warning which requires companies or intermediaries to be primarily responsible for cessation of the conduct in question and not repeating them;

b) a fine of 5,000 to 5,000,000 lei for companies or main intermediaries notwithstanding art. 8 par. (2) of Government Ordinance no. 2/2001 on the legal regime of contraventions, approved with amendments by Law no. 180/2002, as amended and supplemented.

(3) The nature and seriousness of the offense, the offenses referred to in para. (1) a) to g), i) -l), letter n) and r), the ASF Council may apply to major companies or intermediaries, notwithstanding the provisions of art. 5 para. (7) of the Government Ordinance no. 2/2001, approved with amendments by Law no. 180/2002, modified and supplemented, one or more of the following sanctions:

a) temporary or permanent, partial or total prohibition to practise the distribution of one or more insurance products;

b) withdrawal of approval or license, if main intermediaries;

c) ordering removal from ASF registers for secondary intermediaries.

(4) The offenses referred to in para. (1) p) are sanctioned by temporary prohibition of the activity, simultaneously with the fine referred to in paragraph(2) b) notwithstanding the provisions of Art. 5 para. (7) of the Government Ordinance no. 2/2001, approved with amendments by Law no. 180/2002, as amended and supplemented.

(5) Failure of art. 11 para. (14) at expiry of the period of temporary activity prohibition and not resuming the activity, as provided by this law and regulations issued by the ASF, the period of suspension under art. 4 para. (2) it is sanctioned by withdrawal.

(6) In case of failure of national insurance law on general interest intermediaries or auxiliary insurance intermediaries who operate distribution in Romania under the freedom to provide services and the right of establishment, the ASF Council can order them in under art. 7 para. (4) - (6) and (14) and of the art. 212 of Government Emergency Ordinance no. 93/2012 on the establishment, the FSA organization and functioning approved with amendments by Law no. 113/2013, modified and supplemented, temporary or definitive, all or part of the practising of the distribution or distribution of one or more insurance products.

(7) The offenses referred to in para. (1) by individuals in management companies and a leading intermediary responsible for distribution activities and by staff members directly involved in distribution activities are punishable by the following principal sanctions, as appropriate:

a) written notice for people in responsible leadership distribution activities and for staff directly involved in distribution activities, which require them to cease the conduct in question and not repeating it;

b) a fine of 5,000 to 1,000,000 lei, notwithstanding the provisions of art. 8 par. (2) of Government Ordinance no. 2/2001, approved with amendments by Law no. 180/2002, as amended and supplemented.

(8) According to the nature and seriousness of the offense, the ASF Board may apply to individuals in management companies and a leading intermediary one or both of the following principal sanctions, notwithstanding the provisions of art. 5 para. (7) of the Government Ordinance no. 2/2001, approved with amendments by Law no. 180/2002, with subsequent amendments:

a) withdrawal of the approval granted by ASF of the management companies and a leading intermediary authorized by the FSA or the approval given by the ASF to

persons in charge of distribution management of main intermediaries approved by ASF;

b) prohibition of the right to hold positions requiring ASF approval / opinion for a period of between one and five years after the decision to sanction or another date clearly specified therein.

(9) The offenses referred to in para. (1) a) by companies and major intermediaries that distribute insurance policies are fined from 2.500 to 10.000 lei.

(10) Committing by entities organizing training courses, their management and the lecturers of the offenses referred to in para. (1) m) shall be sanctioned with:

- a) a fine of 1,000 lei to 10,000 lei;
- b) withdrawal of the authorization;
- c) suspension of the activity;
- d) withdrawal of the approval for granted lecturers.

(11) The sanctions under par. (2) and (7) can be applied cumulatively with those in para. (3), (4), (6) and (8), notwithstanding the art. 5 para. (7) of the Government Ordinance no. 2/2001, approved with amendments by Law no. 180/2002, as amended and supplemented.

(12) The offenses referred to in para. (1) h) by insurers and intermediaries mainly in the distribution of insurance products based investment is sanctioned as appropriate:

- a) a public statement which indicates the natural or legal person responsible and the nature of the breach;
- b) written notice by which the necessary legal or natural person responsible cease such actions and not repeating them;
- c) if the main intermediaries, the notice of withdrawal of the authorization of the distribution of work;
- d) deletion of records by insurers or main intermediaries, secondary intermediaries as individuals and legal entities;
- e) prohibition of the right to occupy leadership positions in insurers and a leading intermediary authorized by ASF for a period of one to five years for board members held responsible and disqualification from executive positions in leading intermediary authorized by ASF for a period of one to five years for people in charge of distribution of their management held liable;
- f) if a legal entity, notwithstanding the provisions of art. 8 par. (2) of Government Ordinance no. 2/2001, approved with amendments by Law no. 180/2002, as amended and supplemented, a fine of 10,000 lei to 22.4 million lei or up to 5% of total annual turnover according to the latest available annual financial statements approved by management or up to twice the amount of the benefit the breach or loss avoided by it, if they can be calculated, and if the legal person is a parent or subsidiary of a parent company which prepares accounts consolidated financial statements in accordance with applicable national law area, total annual turnover is calculated on the basis of the latest consolidated accounts approved by the management of the parent company of the highest order;
- g) in the case of a natural person, a fine of RON 1,000 or up to RON 3.150.000- or to a maximum of twice the amount of benefit derived from the violation or loss thereby avoided, where they may be calculated.



(13) In determining the penalty type and amount of the fine, the penalties provided for in paragraph. (2) - (10) the ASF Council takes into account the principle of proportionality, documentation and the reasoning qualified and all the relevant circumstances of the deed by natural or legal persons, including the following items:

- a) the nature, severity and duration of the infringement facts;
- b) the degree of responsibility of the individual or entity;
- c) the financial strength, determined as follows:
  - (i) the annual income of the individual;
  - (ii) based on the total turnover of the legal person;
  - d) financial stability;
  - e) the amount and relevance of the profits or losses avoided as far as they can be calculated;
  - f) damage caused through non-compliance concerned customers, insofar as they can be determined;
  - g) repeating steps taken against any violation of law;
  - h) the degree of cooperation with the ASF;
  - i) any infringements committed before.

(14) In case of finding committed two or more offenses, the fine provided for the most serious offense is applied, notwithstanding the provisions of art. 10 para. (2) of Government Ordinance no. 2/2001, approved with amendments by Law no. 180/2002, as amended and supplemented.

(15) By derogation from the head. II of Government Ordinance no. 2/2001, approved with amendments by Law no. 180/2002, as amended and supplemented by decision of the ASF is established and the penalties for minor offenses. The sanctioning decisions issued by the FSA include the grounds of fact and law, noting that natural and legal persons have the right to contest sanctioned according to art. 31 para. (2) the period during which the challenge may be made, and which can address the court, and the effect of the communication of the persons and entities.

(16) The act of finding and specifies the liability of natural and legal persons sanctioned under this item prepared or issued by ASF bodies by law writ of debt.

(17) Upon maturity, the debt becomes enforceable, under which ASF will start the procedure forced recovery of its claims, according to Law no. 134/2010 on the Code of Civil Procedure, republished, as amended.

(18) The fines referred to in par. (2) b) par. (7) b) par. (9), para. (10) lit. a) and para. (12) lit. f) and g) shall be updated depending on the situation of the insurance and/or national economic situation or EU regulations, ASF regulations

(19) The implementation of sanctions and measures sanctions does not exclude the material, civil or criminal case .

(20) Notwithstanding the provisions of art. 8 par. (3) and (4) of the Government Ordinance. 2/2001, approved with amendments by Law no. 180/2002, as amended and supplemented, fines established by law and applied by the ASF Board are constituted as income to the state budget at the rate of 50% and the remaining 50% of budget revenue ASF

(21) The administrative sanctions under this law shall prescribe within six months after the date the infringement is established, but no later than three years from the date of its commission.

(22) The contraventions mentioned in par. (1) are made by those responsible for monitoring and control of the ASF and the application of administrative sanctions under par. (2) - (12) is carried out by ASF Council under Art. 212 of Government Emergency Ordinance no. 93/2012, approved with amendments by Law no. 113/2013, as amended and supplemented.

(23) specialized structures of the ASF carrying out the supervision and authorization notify people from the leadership of distributors, responsible for distribution activity and staff directly involved in distribution activities on violation of legal provisions. People can submit notified within seven days of receiving the notification, a response by explaining why abuse or object.

(24) Upon receipt of the notification under paragraph response. (23), specialized structures within the ASF Council ASF can propose sanctions for measures, within the attached reply.

(25) specialized structures of the with ASF control compile a report after conducting periodic or unannounced controls at the distributors. Distributors may object to the minutes within the time limits established by law.

(26) To the extent that this law does not provide otherwise, the contraventions mentioned in par. (1) are applicable provisions of Government Ordinance no. 2/2001, approved with amendments by Law no. 180/2002, as amended and supplemented. and all the relevant circumstances of the deed by natural or legal persons, including the following items:

- a) the nature, severity and duration of the infringement facts;
- b) the degree of responsibility of the individual or entity;
- c) the financial strength, determined as follows:
  - (i) the annual income of the individual;
  - (ii) based on the total turnover of the legal person;
- d) financial stability;
- e) the amount and relevance of the profits or losses avoided as far as they can be calculated;
- f) damage caused through non-compliance concerned customers, insofar as they can be determined;
- g) repeating steps taken against any violation of law;
- h) the degree of cooperation with the ASF;
- i) any infringements committed before.

## **Article 29** **Offenses**

(1) Activity of distribution without authorization or notice issued / ASF issued or without entry in registers ASF is an offense punishable by imprisonment from three months to two years or a fine.

(2) The use by companies or main intermediaries of services of unregistered persons to ASF or the activity of insurance brokers and intermediaries auxiliary noncompliance with art. 10 para. (10) an offense punishable by imprisonment from three months to two years or a fine.

(3) issuing, trading, holding insurance policies false or forged by companies, the main intermediaries staff directly involved in distribution activities and by individuals who distribute insurance policies, an offense punishable under Art. 320 of Law no. 286/2009 on the Criminal Code, as amended and supplemented.

(4) The use by persons who are not authorized / approved by ASF or not registered for the activity distribution, the names of specific categories of intermediary, primary or secondary dimensions provided by the ASF regulations or derivatives thereof, in connection with a product or service, unless such use is established or recognized by law or by an international agreement or when the context in which people use these words, arising no doubt that it is not distribution activities, is an offense punishable under art. 244 par. (2) of Law no. 286/2009, as amended and supplemented.

(5) Collection and use of ASF authorization or approval or ASF registration using false declarations or other illicit means constitutes an offense punishable under art. 326 of Law no. 286/2009, as amended and supplemented.

### **Article 30** **Legal liability**

Companies and main intermediaries assume responsibility for compliance with the law and are punished for violations under art. 28 committed by intermediaries secondary to the national law.

### **Article 31** **Appeals and rules of procedure**

(1) The act by which ASF, according to Art. 6 para. (10), refuses to communicate to intermediaries or auxiliary insurance intermediaries information provided in art. 21 para. (1) or the lack of communication of this information by ASF may be challenged at the Bucharest Court of Appeal, Administrative and Fiscal within 30 days from the date of the document in question or the date stipulated in art. 21 para. (2).

(2) The acts adopted by the ASF according to the law, on individuals and businesses, according to art. 28, can be appealed to the Court of Appeal Bucharest, Administrative and Fiscal within 30 days after notification.

(3) The Appeals to the Court of Appeal Bucharest, Administrative and Fiscal do not suspend during their resolution measures ordered by the ASF

(4) ASF has no locus passivus and can not be sued in:

- a) trials started against distributors / brokers of insurance, reinsurance and auxiliary insurance, even if they are in financial recovery proceedings or bankruptcy, the failure to meet their obligations under the law and / or international conventions;
- b) lawsuits against entities which organize training courses, lifelong education and professional development;
- c) lawsuits against lecturers;
- d) lawsuits against the ADR entity and individuals responsible for the ADR procedure.

## **Article 32 Publishing**

(1) ASF published in the Official Gazette of Romania, Part I, the decisions imposing penalties or measures referred to in art. 28 para. (3) a) and b), para. (4) - (6), (8) and (10), against which no appeal was initiated within a given term.

10/08/2018 - Derogation by Law 236/2018.

(2) ASF published on its website the decisions imposing penalties provided in Art. 28 para. (2), (7) and (9) which no appeal was initiated within a given term.

10/08/2018 - Derogation by Law 236/2018.

(3) Notwithstanding the provisions of paragraph. (1) and (2) if the publication of the identity of corporate or personal data of individuals is considered by ASF as disproportionate as a result of an assessment made on a case by case basis the proportionality of Publishing such data, or where publishing jeopardizes the stability of financial markets or an ongoing investigation, ASF can:

a) defer publication of the decision until the reasons for non publishing cease to be valid;

b) anonymously publish the decision.

(4) If the decision to impose a sanction or measure is subject to an appeal, ASF immediately publishes on its website such information and any further information on the outcome of the appeal.

(5) ASF published on its website any decision to cancel an earlier decision to impose a sanction or measure.

## **Chapter IX Transitional and final provisions Article 33 Transitional period**

(1) The provisions of art. 10 para. (1) and other regulations on application of its registered brokers apply until the entry into force of this Act under Law no. 32/2000 on and supervision of insurance and reinsurance, as amended and supplemented, as of 23 February 2019.

(2) Within 180 days after the entry into force of this law, the main intermediaries whose activity is suspended at that time or who have temporarily been prohibiting the conduct of business activity can resume only in compliance with this law. Otherwise ASF withdraws approval of intermediaries.

(3) Within 120 days after the entry into force of this law, credit institutions and investment firms which, at that time, carry on bank assurance or have quality assistants in brokerage, as appropriate, under law no. 32/2000, as amended and supplemented, opt for the activity of distribution according to the law and notify the FSA in this respect.

(4) After the expiration of 120 days from the date of entry into force of this law, credit institutions and investment firms that have not submitted the notification under paragraph. (3) can carry out distribution as secondary intermediaries.  
(5) acts and legal facts entered into or, if necessary, performed or produced before the entry into force of this law can not generate other legal effects than those provided by the law in force on the closing date or, where appropriate or their production.

#### **Article 34**

Provisions concerning the processing of personal data

- (1) Notices and information on personal data are lawfully.
- (2) Distributors use the personal data of customers according to the legislation in force concerning the processing of personal data and the free movement of such data.

#### **FINAL PROVISIONS**

#### **Article 35**

- (1) Persons who receive or divulge information in connection with this law observes professional secrecy as set out in Art. 19 of Law no. 237/2015.
- (2) Without prejudice to the rights protected in the forms of advertising, official documents, contracts or other documents, can be used initials, logo, emblem or other identifying distributors or evidence to suggest a link with them only by and in relation to a sub-unit of that entity, including its name.
- (3) For the purposes of exercising their activities, foreign entities can use on Romanian territory the name they use in the Member State of origin, except where confusion could arise, according to the law, in such cases the ASF may require that the specific name is accompanied by an explanatory note in Romanian.
- (4) National Office of Trade Registry grants free access of ASF to its database thereof on distributors registered in accordance with this Law and other natural or legal persons who are approved or seeking approval to become shareholders or significant associates. National Trade Register Office, at the request ASF, economic-financial information reported by distributors.
- (5) Reports, documents, requests of distributors and correspondence of any kind of their signed by ASF rulers. Prerogatives of signing can be delegated for a limited period, while respecting the principle of documentation and qualified judgment.
- (6) For the purposes of the FSA or its representatives, they can get administration rights, according to legal provisions, the necessary buildings - land and buildings - in the national interest. ASF can use their earnings to build, purchase or rent a building appropriate in accordance with applicable regulations.
- (7) Natural and legal persons distributing insurance policies entered the code received from ASF all documents received from the company, according to the law.
- (8) Companies and main intermediaries radiates secondary intermediaries from registers, within 20 days, according to the law, if they:
  - a) do not meet the registration requirements and rules of conduct of this law;
  - b) requested that in writing;

- c) do not obtain evidence on the lifelong vocational training;
- d) terminate the contractual relationships.

### **Article 36** **ASF Regulations**

- (1) ASF issues, under the law, its regulations to implement this law on:
- a) the process and conditions for registration, including refusal or withdrawal of registration;
  - b) the categories of intermediaries provided by this law and legal relations between them;
  - c) the carrying out of the activity, behavior and management aspects of their business, including the activity;
  - d) approval of the shareholders or associates of significant leadership leading intermediary authorized by ASF and approval of persons responsible for the activity of distribution management authorized by ASF main intermediaries;
  - e) trade intermediaries, including the form and content of the records referred to in art. 8 par. (5);
  - f) training, including authorization, coordination, providing standardization work, professional training, approval of courses programs, themes for graduation exams, certification and skills assessment, lecturers distributors and employees of companies engaged in the distribution of insurance and reinsurance;
  - g) the professional indemnity insurance or guarantee auxiliary insurance intermediaries ;
  - h) reporting to the FSA.
- (2) ASF may issue, under the law, specific regulations on:
- a) additional measures and stricter measures regarding:
    - (i) prohibiting the sale of an insurance with a service or auxiliary product where such practices harm consumers;
    - (ii) information requirements other than those provided for in Chapter. V;
    - (iii) the requirements of Art. 26;
  - b) providing a standard format:
    - (i) the information referred to in art. 26 para. (1) - (5);
    - (ii) the notice provided for in art. 27 para. (6);
    - (iii) the information referred to in Art. 27 para. (7) and para.(8) letter c);
  - c) increasing levels of administrative pecuniary sanctions laid down in art. 28;
  - d) handling complaints and disputes between intermediaries and customers;
  - e) the activity of auxiliary insurance intermediaries distribution exempt from this law in accordance with Art. 2 para. (1);
  - f) the publication;
  - g) other aspects of the distribution activity.

## ARTICLE 37

Law no. 237/2015 regarding the authorization and supervision of insurance and reinsurance, published in the Official Gazette of Romania, Part I, no. 800 of October 28, 2015, is amended and supplemented as follows:

1. Article 1 (2), points 2 and 44 are amended to read as follows:

"2. Insurance activity - activity conducted in or from Romania which means, primarily, the supply, distribution, negotiation of contracts of insurance and reinsurance, collection of premiums, damage, activity decline and recovery, as well as investing or capitalizing own funds and attracted by activity;. ....

44. reinsurance - the operation is one of the following:

a) accepting risks given by an insurer or reinsurer in Member States or third countries;

b) a reinsurance coverage by an institution covered by Council Directive (EC) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORP); "

2. Article 110 is amended to read as follows:

" Art. 110 - Authorization withdrawal

(1) ASF withdraw operating authorization granted to companies by reasoned decision detail, if:

a) They were not engaged in consecutive 12-month subscription from receiving the authorization;

b) they request the withdrawal of the authorization;

c) they cease to carry out the subscription for a period of over 6 months in a row;

d) no longer complies with permit conditions;

e) violates the obligations under the law.

(2) ASF withdraw operating authorization granted to companies by reasoned decision in detail, if they do not meet the MCR, and ASF considers that the finance scheme submitted is manifestly inadequate or the company concerned does not comply with the plan approved within three months from the date of failure to comply with MCR.

(3) The decision to withdraw the operating license shall be communicated to the company concerned.

"3. In Article 163, after paragraph (5) a new paragraph (5<sup>1</sup>) is inserted, as follows:

" (5<sup>1</sup>) In case of finding two or more offenses committed, the fine provided for the most serious offense is applied, notwithstanding the provisions of art. 10 para. (2) of Government Ordinance no. 2/2001, approved with amendments by Law no. 180/2002, as amended and supplemented.

4. In Article 163, paragraph (16) shall be amended to read as follows:

"(16) Notwithstanding the provisions of art. 8 par. (3) and (4) of the Government Ordinance. 2/2001, approved with amendments by Law no. 180/2002, as amended and supplemented, fines established by law and applied by the ASF Board are transferred to the state budget at the rate of 50% and the remaining 50% of revenue for the ASF budget "

**Article 38**  
**Legislative adaptation and repeal**

(1) Upon the entry into force of this law, Law no. 32/2000 on and supervision of insurance and reinsurance, published in the Official Gazette of Romania, Part I, no. 148 of April 10, 2000, as amended and supplemented, shall be repealed.

(2) until the FSA regulations according to art. 36, ASF regulations issued pursuant to Law no. 32/2000, as amended and supplemented, shall continue to apply insofar not contravene the provisions of this Act.

(3) Whenever laws and other normative documents referred to provisions relating to intermediaries and insurance and / or reinsurance Law. 32/2000, modifications and additions reference is considered to be made to the present law.

**Article 39**  
**Entry into force**  
**This law comes into force on 1 October 2018.**

This law transposes the Directive (EC) 2016/97 of the European Parliament and the Council of January 20, 2016 on the distribution of insurance, published in the Official Journal of the European Union Series L, no. 26 of 2 February 2016.

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

p.PRESIDENT OF THE CHAMBER OF DEPUTIES, CARMEN-ILEANA MIHĂLCESCU	PRESIDENT OF THE SENATE CĂLIN-CONSTANTIN-ANTON POPESCU-TĂRICEANU
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Bucharest, October 5th 2018  
No. 236.

**APPENDIX**  
**MINIMUM REQUIREMENTS REGARDING KNOWLEDGE AND PROFESSIONAL SKILLS**

**I. Insurance risks in Classes 1 to 18 of Appendix 1A of Law no. 237/2015:**

- a) The minimum required knowledge on policy terms and conditions offered including ancillary risks if they are covered by these policies;
- b) the minimum required knowledge of the applicable provisions governing the distribution of insurance products, such as consumer protection legislation and the relevant legislation in taxation, social and labor;
- c) the minimum required knowledge management applications for compensation;
- d) the minimum knowledge necessary for handling complaints;
- e) the minimum knowledge requirements for assessment of customer needs;



- f) the minimum required knowledge on the insurance market;
- g) the minimum required knowledge on standards of professional conduct;
- h) the minimum skills required in finance.

## **II. Insurance-based investment products:**

- a) The minimum knowledge necessary for insurance-based investment products, including terms, conditions, and net premiums, if any, benefits secured and unsecured;
- b) the minimum required knowledge on the advantages and disadvantages of different investment options for contractors;
- c) the minimum knowledge necessary for financial risks incurred by contractors;
- d) the minimum required knowledge on policies covering risks associated with life insurance and other savings products;
- e) the minimum required knowledge on the organization of pension and benefits guaranteed therein;
- f) the minimum required knowledge of the applicable provisions governing the distribution of insurance products, such as consumer protection legislation and the relevant tax legislation;
- g) the minimum required knowledge on the insurance market and market savings products;
- h) the minimum knowledge necessary for handling complaints;
- i) the minimum knowledge requirements for assessment of customer needs;
- j) managing conflicts of interest;
- k) the minimum required knowledge on standards of professional conduct;
- l) the minimum skills required in finance.

## **III. Risks associated with life insurance classified under Appendix 1 Section C of Law no. 237/2015:**

- a) The minimum required knowledge on policies, including terms, conditions, guaranteed benefits and, where appropriate, ancillary risks;
- b) the minimum knowledge needed for the organization of the relevant Member State pension and benefits guaranteed by it;
- c) knowledge of applicable provisions of law on insurance contracts, consumer protection, data protection, fighting money laundering and, where appropriate, relevant laws of taxation and social and labor;
- d) the minimum required knowledge on the insurance market and other financial services relevant market;
- e) the minimum knowledge necessary for handling complaints;
- f) the minimum knowledge requirements for assessment of consumer needs;
- g) management of conflicts of interest;
- h) the minimum required knowledge on standards of professional conduct;
- i) the minimal competence in financial matters.
- j) managing conflicts of interest;
- k) the minimum required knowledge on standards of professional conduct;
- l) the minimum skills required in finance.