



**Regulation No 4/2021 on the control activity  
carried out by the Financial Supervisory Authority**

In force from 01 February 2021

Consolidation as of 10 June 2022 is based on the publication in the Official Gazette, Part I, No 106 of 01 February 2021 and includes amendments made by the following acts:

Rectification 2021; Regulation 10/2021;

Regulation 11/2022; 2022

Last amendment on 30 May.

Pursuant to the provisions of Art. (2), Art. 2 para. (1), art. 3, 5, 6, as well as art. 212 of the Government Emergency Ordinance no. 93/2012 on the establishment, organization and functioning of the Financial Supervisory Authority, approved with amendments and additions by Law no. 113/2013, as amended,

following the deliberations of the Council of the Financial Supervisory Authority at its meeting of 27.01.2021,

The Financial Supervisory Authority issues this Regulation.

**CHAPTER I**

**General provisions**

Art. 1 - (1) This Regulation lays down the procedural framework for the supervisory activity carried out by the Financial Supervisory Authority, hereinafter referred to as the FSA, as well as the rights and obligations of the parties involved in its conduct.

(2) In accordance with the provisions of Article 3 para. (1) lit. c) and d) and art. 212 of the Government Emergency Ordinance no. 93/2012 on the establishment, organization and functioning of the Financial Supervisory Authority, approved with amendments and additions by Law no. 113/2013, with subsequent amendments and additions, hereinafter referred to as GEO no. 93/2012, the specialized organizational structures within the A. S.F. shall carry out supervision and control of regulated and/or supervised entities and their operations by continuously verifying their activity in the process of continuous monitoring and supervision, as well as by carrying out periodic and unannounced control actions.

Art. 2 - (1) The terms and expressions used in this Regulation shall have the meanings laid down in the legislation specific to the financial supervision sectors, as well as the meanings laid down in paragraph 1. (2).

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

1. control activity - periodic, unannounced or permanent action, based on compliance and/or risk elements, carried out by the specialised organisational structures of the A.S.F., in order to verify the activity, operations, processes and internal mechanisms that are applicable to regulated and/or supervised entities and the persons concerned;

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

3. "repealed"

4. unannounced inspection - a type of inspection consisting of the verification, at the premises of the entity or remotely, of certain activities/operations/processes and internal mechanisms relating to a specific period of time and/or the fulfilment of one or more obligations, as defined in the legislation applicable to the financial supervision sector and which is not notified in advance to the audited entity;

5. periodic control - type of control consisting of periodic verification, at the institution's premises or remotely under the conditions set out in Articles 18 and 19, of certain internal activities/operations/processes and internal mechanisms relating to a specific period of time and the fulfilment of one or more obligations, in accordance with the relevant legislation, on the basis of the annual integrated control plan approved by the A.S.F. Board, in relation to which the controlled institution is notified in advance;

6. cross-checking - technique of checking, at the premises of entities or remotely, the records/operations of an entity in relation to the records/operations of another entity;

7. permanent control - supervisory activity carried out by the A.S.F. which consists of continuous monitoring and verification by the specialised organisational structures, in order to exercise the active role of the A.S.F., of the observation of the application of the legal regulations in force by the entities regulated and/or supervised by the A.S.F., as well as the appropriate management of the risks incident to their activity;

8. control team coordinator - member of the control team empowered, by the control decision, to coordinate the specific activities of the periodic or unannounced control action;

9. control decision - administrative act issued by the A.S.F. ordering the periodic or unannounced control;

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

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

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

13. controlled entity - any entity that is part of the entities authorised, regulated, supervised and/or controlled by the A.S.F., referred to in Article 2 paragraph 2. (1) of O.U.G. no. 93/2012;
14. sampling - the selection of less than 100% of the elements or units of a population for the application of the control procedure, representative for the control activity, in order to provide the control team with a reasonable basis, according to which findings/recommendations can be established for the whole population;
15. "repealed"
16. finding note - a unilateral document drawn up during periodic and unannounced control actions by members of the control team in situations requiring the recording of a state of affairs in relation to the controlled entity;
17. explanatory note - a document drawn up and assumed by representatives of the auditee, the auditee or the legal representative of any other entity to which specific activities have been outsourced, at the request of the relevant organisational structures or, where appropriate, members of the audit team/audit team, in order to provide clarification/explanation on the issues requested;
18. person concerned - natural and/or legal person, directly or indirectly involved in the activity verified by the specialised organisational structures with supervisory or control attributions within the A.S.F.;
19. annual integrated control plan - document approved by the A.S.F. Council through which the entities that will be subject to periodic controls in the respective calendar year are established;
20. action plan - set of obligations imposed by the A.S.F. on a controlled entity following the findings of the control activity with the aim of preventing/correcting deficiencies found and/or managing risks appropriately;
21. population - an entire set of data, documents or transactions with common characteristics (units or elements of the population) from which a representative sample is selected, on the basis of which the control team can formulate its conclusions;
22. hearing minutes - bilateral document concluded during a hearing between the data subject and the members of the hearing team, with the aim of recording the data subject's statements at the hearing, the documents and information made available to the representatives of the A.S.F., as well as any other aspects deemed necessary by the parties to be included in this document;
23. control report - unilateral document addressed to the audited entity, drawn up by the members of the control team, which records the deficiencies, irregularities, malfunctions, non-conformities found as a result of violation of the legal provisions in force and the risks found in the activity of the audited entity, as well as all the aspects found as a result of the periodic or unannounced control;
24. document collection minutes - bilateral document concluded between representatives of the audited entity and members of the inspection team, which records all documents, data and statements collected from the entity's premises or taken by electronic means (in the case of remote inspection) during the periodic or unannounced inspection;
25. permanent control report (supervision) - unilateral document drawn up by the specialised organisational structure with supervisory attributions within the A.S.F., when the verification, analysis or evaluation of the activity of the regulated and/or supervised entities and of the persons concerned results

in the finding of non-compliance with the relevant legal provisions and it is considered, following the analysis carried out, that it is necessary to impose a sanction and/or remedial measures;

26. control topic - includes the objectives/objective of the control action established at the time of drafting the periodic or unannounced control decision;

27. recommendation to the auditee - a tool to demonstrate the pro-active role of the specialised organisational structure with supervisory tasks or of the inspection team, based on various applicable guidelines or guides, best practices identified at market level, used to optimise the activity and/or risk management of the supervised or audited entity;

28. representative of the controlled entity - any person who is a member of the management of the controlled entity, key or critical persons directly involved in the business being controlled, or other persons from among the employees of the controlled entity, designated by the management of the controlled entity to represent the company during the periodic or unannounced control;

29. survey - a method of verifying records, data, and transactions considered representative of an activity/series of transactions conducted by an auditee.

30. specialised organisational structures with supervisory powers - specialised structures within the A.S.F. that carry out the permanent control activity.

Art. 3 - (1) In order to carry out the control activity, the A.S.F. may cooperate and exchange information with any other institutions, bodies and authorities in Romania, in Member States and third countries.

(2) On the basis of the information resulting from the cooperation with other competent authorities, the A.S.F. Council may decide that, in the periodic or unannounced control actions at the authorised entities carrying out activities in other Member States of the European Union on the basis of the right of establishment or the freedom to provide services and of multilateral/bilateral protocols/memoranda, the competent authorities of the respective States may participate, as well as request assistance from the relevant European authorities for the activity of the respective entities, ESMA or EIOPA, if applicable.

Art. 4 - (1) The supervisory activity is developed in two components according to the specificities of the activities carried out:

(a) compliance component - it concerns the breach by entities, their management and other natural/legal persons responsible under the applicable regulatory acts of the specific legislation, as well as possible misconduct in relation to the specific activities carried out;

b) risk component - covers both risks at the level of the controlled entity and those induced at market level, as appropriate.

(2) Periodic and unannounced supervision shall be organised procedurally in a uniform manner across all sectors of financial supervision in accordance with the requirements laid down in this Regulation.

(3) Ongoing supervision shall be organised procedurally at the level of each specialised organisational structure with supervisory tasks, depending on the category of the supervised entity and/or the specificities of the activities carried out at their level.

Art. 5 - (1) The specialised organisational structures with supervisory tasks and/or the control teams may request the controlled entities/persons concerned to submit any documents or information they consider

necessary for the verification, analysis or assessment of compliance and/or risk elements related to the activity carried out.

(2) Requests addressed to the auditee/subjects are the expression of the proactive role of the specialised organisational structure or of the inspection team, binding on the auditee, legally substantiated and used for the purpose of remedying non-compliance/clarifying situations/minimising the risk identified during the inspection activity.

(3) The controlled entity/person concerned is obliged to provide the specialised organisational structures or, as the case may be, the control team or the audit team with real information and/or correct and complete documents, within the established deadline, in the form and on the requested support, so as not to mislead the A.S.F. and not to jeopardise the control activity.

(4) Within the framework of the periodic and unannounced control, the A.S.F. may assess by sampling the significant data, documents and operations to be verified according to their volume, value, weight and relevance, aiming at the most uniform coverage of the entity's activity and the period under analysis.

(5) In the application of paragraph 1, the following shall apply (4), in order to sample a population in such a way as to provide a reasonable basis on which to draw conclusions about the entire data set from which a sample is selected, criteria such as:

(a) the size, complexity and nature of the business of the audited entity, the volume and value of transactions, operations or activities conducted including, where appropriate, the value of assets managed, administered, deposited or held in custody;

(b) the complexity of the financial products that are the subject of the activities, services or operations carried out by the entity and the specific risks attached to them;

(c) the number of clients/investors/insureds/beneficiaries of financial services and products offered by the entity and the structure of the stable client base;

(d) the degree of compliance observed in the supervisory process;

(e) transactions or time periods, peaks or variations that are outside the entity's normal business pattern;

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

(6) The selection of sample items shall be based on professional judgement, sampling, and/or statistical evidence so that each sample unit has a known probability of being selected.

(7) The provisions of paragraph 1 shall not apply. (4) and (5) shall also apply appropriately in the event that supervisory activity based on reports, indications or referrals received identifies the need for further analysis to verify/examine the reality or consistency of data and information submitted by the entity with the requirements of the legislation in force.

## **CHAPTER II**

### **Periodic and unannounced control**

#### **SECTION 1**

##### **Stages of periodic and unannounced control**

Art. 6 - The periodic and unannounced control carried out by the A.S.F. at the level of the entities involves the following stages:

- a) the stage prior to the control action;
- b) the control process;
- c) the use of the control result;
- d) monitoring the results of the control, if a plan of measures has been imposed on the controlled entity.

Art. 7 - (1) In justified situations, during any of the stages referred to in Article 6 a) and b), the A.S.F. may issue a new decision on:

- (a) supplementing or changing the composition of the inspection team;
- b) extension of the subject matter of the inspection and/or of the inspection period/period of inspection at the entity's premises;
- c) suspension of the inspection for a maximum period of 90 days.

(2) The A.S.F. shall notify the inspected entity of the decision referred to in para. (1).

(3) In the situation referred to in para. (1) lit. c), the A.S.F. shall communicate to the entity the decision on the date of suspension of the control and shall notify the date of resumption of the control at least two working days prior to the resumption of the control.

#### **SECTION 2**

##### **Stage prior to the periodic or unannounced inspection**

Art. 8 - In the exercise of its powers, provided for in Article 3 para. (1) lit. c) and Art. 212 para. (2) and (3) of O.U.G. no. 93/2012, the A.S.F. shall decide on the type of control to be carried out, depending on the objectives and complexity of the entity's activity, in accordance with the provisions of this Regulation and the specific legislation applicable to each financial supervision sector.

Art.9 - (1) The initiation of a periodic or unannounced control shall be based on a control decision signed by the A.S.F. president.

(2) The control decision referred to in paragraph 1 shall be adopted by the Commission. (1) shall include, but not be limited to, the following:

- (a) the type of control;

- (b) the identification data of the entity subject to control;
- (c) the period checked;
- (d) the period of control, i.e. the date of commencement and the date of completion of the control action;
- e) the composition of the inspection team and its coordinator;
- f) the subject matter of the inspection.

(3) In the case of periodic audits, the audit scope shall focus on significant compliance and risk elements related to the activity of the audited entity and shall be developed, for each auditee, according to:

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

(4) In the case of an unannounced inspection, the subject of the inspection shall be specific and shall be based on the results of the ongoing inspection and/or on matters referred to the A.S.F. by third parties regarding the entity to be inspected.

Art. 10 - (1) The audited entity shall be notified in writing at least 15 days prior to the date set by the A.S.F. for a periodic inspection.

(2) The notification referred to in para. (1) shall be sent by e-mail, fax or letter with acknowledgement of receipt and shall contain:

(a) the date of commencement and the date of completion of the inspection at the premises of the entity, the period inspected, the related subject matter and the first questionnaire requesting data/information/documents;

b) a statement that any requests for information/data/documents in the form of questionnaires/maquettes/data/information summary sheets may be submitted throughout the inspection.

Art.11 - (1) In case of force majeure or in other exceptional circumstances, which may make it impossible to ensure the necessary conditions for the control, the controlled entity may request the A.S.F., within a maximum of 3 working days from the date of receipt of the notification referred to in Art. 10 para. (2), to postpone the start of the periodic inspection for a maximum of 20 working days, with the presentation of the arguments and the relevant supporting documents.

(2) The A.S.F. may ask the entity to be controlled for additional explanations/supporting documents in order to take a decision on the request received and shall communicate in writing to the entity the decision taken.

### **SECTION 3**

#### **Stage of the periodic or unannounced inspection**

##### **SUBSECTION 1**

###### **Rights and obligations of the auditee**

Article 12 - (1) During the inspection at the premises of the entity, the audited entity and its representatives shall have the following rights:

(a) to receive fair and equitable treatment from the inspection team, based on a constructive institutional dialogue;

(b) to provide the inspection team, on a voluntary basis, with any explanations they consider necessary to clarify situations identified during the inspection;

(c) to have his working hours respected; the inspection may also be carried out outside the working hours of the inspected entity with the prior written consent of its legal representative;

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

(2) During the inspection at the premises of the entity, the inspected entity and its representatives shall have the following obligations:

a) to allow the inspection team access without delay to the premises where the activity for which it has been authorised/approved by the A.S.F. is carried out, as well as to the premises where the documents related to the activity carried out and the IT systems used are located;

(b) to ensure that the control activity is carried out in good conditions and to provide the necessary support, without attempting to obstruct it;

(c) make available to the inspection team, within the deadlines and in the form requested, any document/evidence requested, of any nature, on any medium indicated by the inspection team, in original/certified true copies/translations into Romanian, where appropriate, including explanatory notes;

(d) to cooperate, with a view to establishing the factual situation, by presenting the known facts and all supporting documents in full and to implement the urgent measures ordered by the inspection team in the notes drawn up;

(e) sign the report on the collection of documents.

##### **SUBSECTION 2**

###### **Rights and obligations of the inspection team**

Art. 13 - (1) In the exercise of its duties, the inspection team shall have the following rights during the inspection at the premises of the audited entity:



a) to use any of the established control techniques and tools, such as, but not limited to: questionnaire, survey, interview, observation, cross-checking;

(b) to request and verify in full or on a sample basis any type of document/evidence of any kind, on any medium, which is or may be related to the activity covered by the control action, including outsourced/transferred activities, where appropriate, and to computerised systems for recording, storing and processing data;

(c) collect copies of documents or centralised statements, in any format, on any medium, and request written explanatory notes from the legal representative/management of the controlled entity, any of its employees, and the legal representative of any other entity to which specific activities have been outsourced;

(d) interview the relevant persons within the auditee in order to achieve the objectives of the control;

(e) to request immediate action to remedy certain deficiencies in situations of major risk and/or requiring urgent action, by drawing up a report to that effect at the premises of the audited entity;

(f) have access to any premises and premises where the entity carries out its activities, as well as to the premises where documents and computer systems for recording, storing and processing data are located, including the premises of entities to which some of the specific activities have been outsourced, in the presence of a representative of the audited entity, who must accompany the inspection team;

g) to request additional information, documents, explanations or clarifications during the regular or unannounced stages of the inspection, indicating the deadlines for replying.

(2) In the exercise of its duties, the inspection team shall, while carrying out the inspection at the premises of the audited entity, have the following obligations:

(a) present the inspection decision and identify itself by showing its service badge;

(b) ensure that the control decision has received a registration number from the auditee and record the information relating to the control decision in the single control register of the auditee;

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

d) respect the working hours of the controlled entity; the control may also be carried out outside the working hours of the controlled entity with the prior written consent of its legal representative;

(e) maintain the confidentiality of the data and information obtained, in compliance with the legal provisions.

(3) The inspection team shall be proactive throughout the inspection and shall ensure the reactive/co-active role of the inspection.

### **SUBSECTION 3**

#### **Periodic or unannounced inspection at the premises of the entity**

Art.14 - (1) The inspection team shall be present at the premises of the inspected entity on the date set for the start of the inspection activity, in order to carry out specific checks, following the inspection topics.

(2) If the inspection team is at the premises of the inspected entity but, for reasons beyond its control, is unable to carry out the inspection, it shall draw up a report stating the reasons for the situation.

(3) The situation referred to in paragraph 1 shall be reported to the Commission. (2) shall be brought to the attention of the President of the A.S.F. and the coordinating Vice-President in the case of an unannounced inspection, or to the Council of the A.S.F. in the case of a periodic inspection, with proposals for the adoption of measures to be taken.

Art. 15 - (1) The inspection team shall ask the representatives of the inspected entity for clarifications/explanations on certain aspects, by means of a request for information/questionnaire, and the documents drawn up shall receive a registration number from the inspected entity.

(2) Clarifications/Explanations/Written submissions by representatives of the auditee shall be the subject of explanatory notes.

Art. 16 - (1) In accordance with the provisions of Art. 13 para. (1) letter e), if, during the inspection at the premises of the audited entity, the inspection team finds risk situations requiring urgent measures to be taken by the audited entity, it shall inform the management of the entity, which shall be requested to take the decision to take a set of measures, with the corresponding deadlines. The inspection team's request shall be recorded in a finding note.

(2) The report referred to in paragraph 1 shall be sent to the inspection team. (1) shall be registered with the auditee and shall be communicated, under a signed receipt, to the legal representative/management of the auditee, a copy of which shall be retained by the inspection team and attached to the report on the collection of documents.

(1) The inspection team shall collect the selected documents from the premises of the inspected entity or, in the case of a remote inspection, by electronic means, and shall draw up a document collection report in two original copies, one for each signatory party.

(2) The document removal report shall include the following information:

(a) the explanatory notes received by the inspection team in accordance with Article 15;

(b) identification of the documents taken over by the inspection team in electronic/paper format, specifying the number of files and the fact that they are in conformity with the original;

(c) references to any other documents, data, statements and/or information submitted to the inspection team;

(d) a statement that all original documents made available to the inspection team have been returned and that the entity certifies that the copy documents submitted/reproduced by the inspection team are complete and consistent with the originals.

Art. 18 - (1) By exception to the provisions of Art. 14 para. (1), the stage of carrying out the periodic or unannounced inspection at the entity's premises may also be carried out remotely:

a) if, after the start of the inspection action, during the period of the inspection, the inspection team deems it necessary to analyse/process data and information obtained from the inspected entity at the A.S.F.'s head office;

b) in extraordinary situations which endanger or could endanger health or normal working conditions, such as epidemics, pandemics, extreme natural phenomena, earthquakes, acts of terrorism and other situations which make it impossible to carry out the procedure as provided for in this chapter.

(2) In the situations referred to in paragraph (1), the interaction between the controlled entity and the control team shall be carried out by means of electronic communication, such as teleconference, videoconference, e-mail, electronic platforms, as appropriate. All documents issued during the control shall be signed by the parties involved, i.e. the members of the control team and/or the representatives of the controlled entity, as appropriate, with a qualified electronic signature or by holography and photocopied/scanned in PDF format.

(3) In case the periodic or unannounced control action takes place remotely, the provisions of this Regulation on the content of the control decision, the provisions on the documents drawn up during the control, i.e. the notification, the report on the collection of documents, the control report, as well as the rights and obligations of the controlled entity and the control team shall apply accordingly.

(4) The auditee must have the necessary IT infrastructure and means of communication to ensure the proper conduct of the control activity, including qualified electronic signature, and, where necessary, grant the control team access to the information in the IT systems through which the operations subject to the control are carried out, according to the control theme.

(5) Access by the control team to the information in the computer systems shall be on a temporary basis, with the right to view and in compliance with the security policies of the controlled entity, through a designated employee of the controlled entity.

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

Art. 19 - The inspection team shall transmit by electronic means of communication to the inspected entity the inspection decision and the request for the documents and information that it considers necessary for carrying out the periodic or unannounced remote inspection, and the inspected entity shall confirm receipt and record them in its records.

#### **SUBSECTION 4**

##### **Establishment of the inspection report**

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

Art.21 - (1) The control team shall bring to the attention of the auditee during the control action, as well as at its conclusion, in a closing meeting, the preliminary issues identified and, respectively, retained, resulting from the documents examined and from the discussions/interviews with the persons who provided information relevant to the issues analysed, in accordance with the control topic.

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

- a) the risk and prudential elements identified at the level of the audited entity, as appropriate;

b) a description of the elements of non-compliance found, i.e. the facts that represent breaches of the specific legislation applicable to the audited entity, with an indication of the legal provisions found to have been infringed;

c) various requests and recommendations addressed to the auditee, with the role of preventing or correcting situations potentially giving rise to shortcomings, mitigating the effects of certain events or providing guidance to the auditee in relation to certain aspects found;

d) other relevant matters, as appropriate.

(3) Compliance of the control report with the control objectives and the related subject matter shall be ensured at the level of the coordination and management functions of the specialised organisational structure with control functions.

Art. 22 - (1) The control team coordinator shall forward to the controlled entity the control report, drawn up and signed in accordance with Article 21 para. (2), in electronic form or by any other means of communication that can be proved subsequently, and shall ask the representatives of the auditee to forward, if appropriate, any objections to the deductions therefrom.

(1<sup>1</sup>) The inspection report referred to in paragraph 1 shall be sent to the inspected body. (1) shall be forwarded to the auditee:

a) within a maximum of 10 working days of the completion of the periodic inspection;

b) within 2 working days of the end of the unannounced inspection.

(2) The registration number of the inspection report received from the A.S.F.'s registry shall be entered in the single inspection register of the inspected entity.

(3) The inspected entity shall submit in writing, if necessary, the objections to the deductions of the inspection team mentioned in the inspection report within:

a) a maximum of 7 working days from the date of receipt of the inspection report, in the case of periodic inspections;

b) a maximum of 2 working days from the date of receipt of the inspection report in the case of unannounced inspections.

(4) If, by the expiry of the period referred to in paragraph 1, the competent authority has not received a copy of the inspection report within the time-limit referred to in paragraph 2, it shall (3) no objections have been received, the inspection team shall record this in the note provided for in Article 25 (3). (1).

Article 23 - "repealed "

## **SUBSECTION 5**

### **Objections to the inspection report**

Art. 24 - (1) The inspected entity may submit to the A.S.F. registry, physically or by means of electronic mail under qualified electronic signature of the legal representative of the entity, the objections to the findings recorded in the inspection report communicated pursuant to Art. 22 para. (11), within the time

limits laid down in Article 22 (11). (3), and communicate them also in electronic format, with the qualified electronic signature of the legal representative of the audited entity, to the control team coordinator, in order to facilitate their processing.

(2) "repealed

(3) The inspected entity shall inform the persons whose duties are related to the situations found by the inspection team, as well as those with whom the employment/representation relationship has ended on the date of receipt of the inspection report, in order to formulate any objections, respecting the deadline for their submission.

## **SECTION 4**

### **Use of the results of periodic or unannounced control**

Art. 25 - (1) The management of the specialised organisational structure to which the inspection team belongs shall submit for inclusion on the agenda of the meeting of the A.S.F. Council a note on the conclusions and proposals on the aspects found as a result of the inspection, accompanied by the inspection report and the objections of the inspected entity, if they have been submitted.

(2) On the basis of the information submitted in accordance with para. (1), the A.S.F. Council may order measures and/or sanctions.

Art. 26 - (1) According to the specific legislation, the control activity shall be completed following the decision of the A.S.F. Council, where appropriate, by:

a) notifying the audited entity of the results of the periodic or unannounced inspection, provided that no deficiencies have been found that would lead to the application of sanctioning measures or the ordering of remedial measures and/or the request to submit a response/plan for the implementation of the recommendations made in the inspection report;

b) notify the auditee, warning the auditee and/or the persons responsible for the minor deficiencies together with the proposed recommendations;

c) the establishment of an action plan to remedy the deficiencies found and/or to prevent the occurrence/materialisation of risks in the auditee's activity;

d) request that the audited entity submits to the A.S.F. a set of measures to remedy the deficiencies/prevent the emergence/materialisation of risks;

e) sanction the audited entity and/or the persons responsible for the deficiencies found;

f) referral to the bodies empowered by law, if necessary;

g) any other measures that the A.S.F. Board may adopt, according to its powers, which are not enforceable against the controlled entity.

(2) The auditee and, where appropriate, the persons concerned shall be informed of the results of the periodic or unannounced inspection by post, with acknowledgement of receipt, fax, e-mail, by the representative of the auditee or in person, with acknowledgement of receipt, except in the situations referred to in paragraph 1. (1)(f) and, where applicable, in paragraphs (2) and (3). (1)(g).

(3) Where, as a result of the regular or unannounced control action, sanctions are imposed on the management of the controlled entity or key persons, a copy of the sanction decision shall also be sent to the entity concerned for information.

(4) The controlled entity shall be obliged to send to the A.S.F., within a maximum of 5 working days from the information referred to in paragraph (1), a copy of the decision to be taken to the competent authority. (2), the proofs of the notifications of the results of the periodic or unannounced control by the persons concerned.

Art.27 - Insofar as, after the completion of the periodic or unannounced control, the A.S.F. comes into possession of additional information and data concerning the controlled entity and the operations controlled, it may decide to initiate a new control action.

## **SECTION 5**

### **Follow-up of the results of the periodic or unannounced control, where a plan of measures has been imposed on the controlled entity**

Art. 28 - (1) If the A.S.F. issues a plan of measures to the audited entity or requests it to submit to the A.S.F. a set of measures taken in order to remedy deficiencies/prevent the occurrence/materialization of risks, the audited entity shall be obliged to implement the measures ordered by the A. S.F. or those proposed by the controlled entity within the deadlines set and to inform the A.S.F. of the steps taken to carry it out, within the deadlines and in the form requested.

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

(3) The specialised organisational structures within the A.S.F. shall monitor, in accordance with their specific duties, during the period stipulated in the action plan, the implementation of the concrete remedial measures and compliance with the implementation deadlines.

## **CHAPTER III**

### **Hearing**

Art.29 - The organisational structures with supervisory and control attributions within the A.S.F., independently or in conjunction with the performance of a periodic or unannounced control, may carry out, as appropriate, any additional investigations, using any specific techniques and tools, including hearings of persons on whom it is deemed that they can provide necessary clarifications of the situation analysed/verified.

Art. 30 - (1) The summons to the hearing shall be made on the basis of a hearing decision, under the signature of the coordinating vice-chairman.

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

(a) the subject of the hearing;

(b) the date and place of the hearing;

(c) the documents requested to be submitted at the hearing.

(3) The person summoned shall be required to appear at the time and place set for the hearing with the supporting documents requested, if any.

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

Art.31 - (1) The person summoned shall be informed by the hearing team about the methodology of the hearing at the time of the start of the hearing.

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

(3) It is prohibited for the person being interviewed to use any devices that allow audio/video recording of the discussions at the hearing and their subsequent playback.

(4) At the hearing, the person being heard shall be obliged to provide the hearing team with all information held, accurate and complete, on any medium, in any form, without obstructing the conduct of the investigation, with a view to clarifying a particular situation, and the information provided shall be recorded by the person being heard in an explanatory note.

(5) The hearing shall be concluded by the conclusion of a record of the hearing, the content of which shall be similar to the record of the collection of documents provided for in Article 17(1). (2), including any other observations of the parties which are deemed necessary to be included in this document.

(6) The minutes of the hearing shall be drawn up in two original copies, one for each signatory party, shall be signed by the person heard and the hearing team and shall be given a registration number in the A.S.F. registry.

## **CHAPTER IV**

### **Permanent control**

Art.32 - (1) Permanent control is continuous and is carried out by the specialised organisational structures within the A.S.F. with the relevant attributions, in order to verify, analyse or evaluate the elements of compliance and/or risk related to the activity carried out by the entities.

(2) In the exercise of permanent control, the specialised organisational structures with supervisory powers may apply, as appropriate, including the provisions of Articles 29 and 30.

(3) The supervised entities shall be obliged to transmit and/or make available to the specialised organisational structures referred to in paragraph 30 the information referred to in paragraph 30. (1) correct, complete and/or real information, within the established deadline, in the form and on the medium requested by these structures, so as not to jeopardize the conduct of the permanent control and not to mislead the A.S.F..

(4) The responsibility for the transmission and content of the documents and information referred to in para. (3) shall be the responsibility of the management of the entity and/or the responsible person.

(5) The supervised entity shall have the necessary IT infrastructure and communication means to ensure the proper conduct of the permanent control activity, including qualified electronic signature and, when necessary, to grant access to the information in the IT systems through which the operations subject to verification in the permanent control are carried out.

(6) Access to information in computer systems shall be granted on a temporary basis, with the right to view and in compliance with the security policies of the auditee, through an employee of the auditee designated for this purpose, for the purpose of carrying out the checks required for the permanent control under proper conditions.

(7) Findings arising from the exercise of the permanent control with regard to breaches of obligations laid down in the applicable legislation by the controlled entities/persons at the head of the controlled entities/responsible natural or legal persons shall be recorded in the permanent control report and shall be communicated to the controlled entity and its management and/or responsible persons via the permanent control report.

Article 33 - The permanent control report referred to in Article 32 (2) shall be submitted to the auditee or the auditee's body. (7), signed in holography or with a qualified electronic signature by the management of the specialised organisational structure, shall be registered at the A.S.F.'s registry and shall include, as appropriate, the following:

a) a description of the elements of non-compliance found, i.e. the facts that represent violations of the specific legislation applicable to the entity, with an indication of the legal text held to be non-compliant/violated;

(b) elements of risk, prudence or conduct identified at the level of the entity under permanent supervision, if applicable;

(c) the persons held responsible under the legislation in force;

d) requests and/or recommendations with the role of preventing or correcting situations that may give rise to shortcomings, mitigating the effects of events that have occurred or providing guidance on certain aspects observed;

e) other relevant issues, as appropriate.

Art.34 - (1) The permanent control report, drawn up in accordance with Article 33, shall be sent to the controlled entity and the persons concerned by any of the means of communication provided for by the Code of Civil Procedure, with mention of the possibility to express a point of view or objections on the deductions therein; the permanent control report represents the notification to the controlled entity and/or to the management of the controlled entity/persons responsible on the violations of the legal provisions found by the specialized organizational structure of the A.S.F.

(2) The controlled entity and/or the persons concerned, notified in accordance with para. (1), may submit, including by electronic means, a point of view, explanations, supporting documents or objections regarding the deductions in the permanent control report, within the time limit provided for by the applicable legislation, but not more than 7 days from the receipt of the notification, if the specific applicable legislation does not provide for another time limit.

(3) If the Continuous Surveillance Report identifies deviations requiring urgent action, the auditee and/or the relevant persons referred to in paragraph 1 shall inform the competent authority of the



Member State of the deviation. (1) shall respond to the request referred to in paragraph 1. (2) within a maximum of one working day from the date of receipt of the notification of the Continuous Surveillance Report, unless otherwise provided for in the specific primary legislation applicable.

(4) The audited entity shall inform the persons whose duties are related to the situations presented in the permanent control report, as well as those with whom the employment/representation relationship ended prior to its receipt, in order to formulate possible objections, within the time limit set out in paragraph 1. (2) or (3), as appropriate.

(5) The A.S.F. may request the controlled entity and/or the data subjects referred to in paragraph 2 to provide the information referred to in paragraph 2. (1), by electronic means, information, supporting documents, explanations or additional details, in order to clarify certain aspects resulting from the analysis of the point of view or objections to the permanent control report, indicating the deadline for reply.

(6) If the acts, documents and information requested, including in the case of the hearing, if any, are not made available to the A.S.F. in accordance with the provisions of Art. 32 para. (3), as well as within the time limits and in the form established, the fact will be retained in the conclusions presented in the note referred to in art. 35.

Art. 35 - (1) The specialised organisational structure of the A.S.F. shall analyse the point of view, the explanations or objections formulated, as well as the documents or additional information submitted by the audited entity or its management/persons concerned and shall draw up the note on the conclusions and proposals on the aspects found after the permanent control.

(2) The management of the specialised organisational structure shall submit for inclusion on the agenda of the meeting of the Council of the A.S.F. the note referred to in paragraph 1. (1), accompanied by the permanent control report and the objections of the controlled entity/persons concerned, if they have been submitted.

(3) On the basis of the information submitted pursuant to para. (2), the A.S.F. Board may order measures and/or sanctions.

(4) For the purpose of the exploitation of the results of the permanent supervision, the provisions of Articles 26 and 28 shall apply accordingly. Any reference to the outcome of the control shall be deemed to be a reference to the outcome of the permanent control activity.

## **CHAPTER V**

### **Penalties**

(1) Non-compliance by the supervised entities and/or by their management and/or by the responsible natural or legal persons with the provisions of this Regulation, as well as with the remedial measures and/or with the additional reporting requirements imposed, immediately or within the deadline indicated by the A.S.F., shall be sanctioned by the A.S.F. in accordance with the provisions of the specific legislation applicable to the supervised entity, as well as in accordance with the provisions of O.U.G. no. 93/2012.

(2) The sanctions and/or measures shall be imposed on the basis of the decision of the A.S.F. Council and shall be communicated to the sanctioned entity/person.

## CHAPTER VI

### Transitional and final provisions

Art. 37 - Periodic or unannounced control actions in progress on the date of entry into force of this Regulation shall continue in accordance with the regulations in force on the date of the start of the control action.

(1) This Regulation shall be published in the Official Gazette of Romania, Part I, and shall enter into force on the date of its publication.

(2) On the date of entry into force of this Regulation, the Regulation of the Financial Supervisory Authority No 11/2016 on the regular and unannounced control activity carried out by the Financial Supervisory Authority, published in the Official Gazette of Romania, Part I, No 1.070 of 30 December 2016, with subsequent amendments and additions, shall be repealed.

President of the Financial Supervisory Authority,

Nicu Marcu

Bucharest, 27 January 2021.

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