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Legal Bulletin



Banking & Finance

Summary:

1. Order No. 37/2021 on the implementing norms of Law No. 129/2019 for preventing and fighting money laundering and terrorist financing, as well as for amending and supplementing certain legislative acts, for reporting entities supervised and controlled by the National Office for Prevention and Control of Money Laundering (“Order 37/2021” or “Implementing Norms”)

Changes to Anti-Money Laundering and Counter Terrorist Financing legislation

Order 37/2021 introduces in the internal legal framework new norms for the implementation of the provisions of Law No. 129/2019 for preventing and fighting money laundering and terrorist financing, as well as for amending and supplementing certain legislative acts (“**Law 129/2019**”), repealing the existing implementing norms, as previously adopted by Order of the President of the National Office for Prevention and Control of Money Laundering No. 102/2020.

Order 37/2021 mainly concerns implementing, also at the level of application norms, the amendments generated by the transposition into national law of the provisions of Directive (EU) 2018/843 of the European Parliament and Council of 30 May 2018 amending the Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as well as amending Directives 2009/138/EC and 2013/36/EU (“**AML V Directive**”).

Order 37/2021 has the purpose of correcting the legislative inconsistencies between Law 129/2019 and the implementing norms.

The Implementing Norms, as introduced by Order 37/2021, entered into force on 9 March 2021.

1. General provisions

The main amendments to the implementing norms of Law 129/2019 include the extension of the categories of reporting entities supervised by the National Office for Prevention and Control of Money Laundering (the "Office"), the amendment of the criteria for determining the obligation to provide the independent audit function, and also detailing the rules applicable to the Office's supervisory and control activities.

2. Reporting entities

The Implementing Norms extend the categories of reporting entities that are supervised by the Office, reflecting the amendments to Law 129/2019, by including the following categories:

- Authorized valuers registered with the National Association of Romanian Authorized Valuers, entities that undertake to provide, directly or through other affiliated persons, material assistance, assistance or counselling on tax and financial issues, as their main economic or professional activity. Also included are the entities that **actually carry out** the activities mentioned in Article 5(1)(e) of Law 129/2019 according to NACE Code 7022;
- Persons exercising a liberal legal profession, if they provide assistance for the creation, operation or administration of trusts, companies, foundations or similar structures;
- Providers of exchange services between virtual currencies and fiat currencies, authorized by/registered with the Ministry of Finance;
- Suppliers of digital wallets, authorized by/registered with the Ministry of Finance;
- Real estate agents and developers (including when acting as brokers in the leasing of real estate, but only for transactions with the monthly rent value equal to or more than the RON equivalent of EUR 10,000);
- Persons who trade works of art or who act as brokers in trading works of art, including when this activity is carried out by art galleries and auction houses, where the value of the transaction or of a series of related transactions represents the RON equivalent of EUR 10,000 or more. Also included in this category are the entities that **actually carry out** the activities mentioned in Article 5(1)(j) of Law 129/2019 under the NACE Codes 4778, 4779, 4791, and 9003.
- Persons who store or trade works of art or who act as brokers in trading works of art, when this activity is carried out in free zones, if the value of the transaction or of a series of related transactions represents the RON equivalent of EUR 10,000 or more. Also included in this category are the entities that **actually carry out** the activities mentioned in Article 5 (1)(k) of Law 129/2019 in free zones, under the NACE codes 4778, 4779, 4791, 4799 and 9003;

3. The independent audit function

According to the provisions of Law 129/2019, depending on the size and nature of the activity, the reporting entities must provide an independent audit function in order to test the policies, internal regulations, mechanisms and procedures provided by the law. The Implementing Norms specifically establish the value criteria upon which this obligation becomes applicable to a reporting entity.

According to the Implementing Norms, the reporting entities are required to provide an independent audit function if, for the latest financial year, they exceeded at least two of the following criteria:

- a) total assets: RON 16,000,000 (previous threshold was set at RON 5,000,000);
- b) total turnover: RON 32,000,000 (previous threshold was set at RON 10,000,000);
- c) average number of employees: 50 (previous threshold was set at 30 employees).

4. The designated person and the protection of individuals with duties in the application of Law 129/2019

The Implementing Norms are aligned with the current form of Law 129/2019, eliminating the obligation to send to the Office information regarding the appointment of the designated person/compliance officer. The documentation regarding their appointment and duties shall be kept in the company's records.

The Implementing Norms also introduce additional provisions regarding the obligation of reporting entities to provide mechanisms for the protection of persons with duties in the application of Law 129/2019, which include:

- a) The protection of employees or persons in a similar position within regulated entities, who report any breach of the Law 129/2019, committed within these entities;
- b) Adequate protection of designated persons or compliance officers;
- c) The protection of personal data of the individual reporting any breach of the Law 129/2019, as well as of the individual suspected of being responsible for the breach, in accordance with the principles set out in Regulation (EU) 2016/679;
- d) Guaranteeing in all cases the confidentiality regarding the identity of the individual reporting any breaches of the Law 129/2019, committed within the regulated entity, unless the disclosure is required by other legal provisions;

The reporting entity also has the obligation to ensure the legal protection of the employees and their representatives who report, either internally or to the Office, suspicions of money

laundering or terrorist financing, against exposure to threats, retaliatory or hostile actions, especially against unfavourable or discriminatory actions at work, including ensuring the confidentiality of their identity.

5. The supervision and control exercised by the Office

The Implementing Norms provide additional information on the control activity carried out by the Office, detailing the applicable formalities and procedures. The Office may continue to carry out inspections with prior notice sent to the reporting entity or unannounced inspections when, based on the data held by the Office, there are suspicions of money laundering or terrorist financing.

The start of the control procedure shall be notified to the reporting entity in one of the ways provided by the Implementing Norms, and the notice shall be sent to the reporting entity at least two business days before the start of the control activity. Also, as a novelty, the Implementing Norms provide the right of the reporting entity to request, only once and for justified reasons, the postponement of the starting date of the control activity.

Any action of intentionally preventing the control from being carried out constitutes the administrative offence of obstruction of the control activity and may consist of, but without being limited to:

- a) Restricting in any form the performance of the control on the date, time and place mentioned in the prior notice;
- b) Preventing the Office's control personnel from accessing the entity's head office;
- c) Failing or delaying to provide, or providing inaccurate data and information to the Office's control personnel;
- d) The absence of a legal representative/attorney of the entity at the start/end of the control activity.

Editors

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