

24 July 2020

Legal Bulletin



Banking & Finance

In this issue:

1. **Government Emergency Ordinance No. 111/2020 amending and supplementing Law No. 129/2019 on preventing and fighting money laundering and terrorist financing and amending and supplementing also certain legislative acts, supplementing Article 218 of Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy, amending and supplementing Law No. 207/2015 on the Tax Procedure Code, and supplementing also Article 12(5) of Law No. 237/2015 on the authorisation and supervision of insurance and reinsurance (“GEO No. 111/2020”)**

Amendments brought to the legislation regarding preventing and fighting money laundering and terrorist financing and to other enactments in relation thereto

GEO No. 111/2020 transposes into national law the provisions of Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, by amending Law No. 129/2019 on preventing and fighting money laundering and terrorist financing, and amending and supplementing also certain legislative acts (“**Law No. 129/2019**”).

The provisions of GEO No. 111/2020 entered into force on 15 July 2020.

1. General provisions

The main amendments brought to Law No. 129/2019 concern the duties the authorities have in the application of such law. Thus, the National Office for Prevention and Combating of Money Laundering (the “**Office**”) shall annually forward the statistics set out in Law No.

129/2019 to the European Commission, and risk assessments to the European Commission, the European Supervisory Authority and the Member States.

The National Integrity Agency has the duty to draw up the list of the important public functions that are provided for by the national legislation, which shall be published on the Agency's website and forwarded to the European Commission.

2. Financial institutions

According to the new definition under Law No. 129/2019 as amended by GEO No. 111/2020, financial institutions include *inter alia* the specialised entities conducting currency exchange activities for natural persons organised as currency exchange offices, as well as the entities managing tourist establishments providing tourist accommodation and conducting foreign currency purchases from natural persons. Moreover, clarifying amendments are brought to the definitions of service providers for trusts, companies and other legal entities or arrangements, and gambling services.

As regards electronic money issuers and payment service providers that are authorised in other Member States and operate in Romania, GEO No. 111/2020 supplements the regulatory and supervisory regime, in that it imposes the establishment of a single point of contact to fulfil the functions set out in Delegated Regulation (EU) 2018/1.108.

Payment institutions and electronic money institutions shall forward to the central tax body, in 90 days from entry into force of GEO No. 111/2020, the list of holders - natural persons, legal persons or other entities without legal personality - who have opened accounts, as well as the other information referred to in Article 61(2)(a) of Law No. 207/2015 on the Tax Procedure Code, concerning the identity of persons and the IBAN number.

3. Virtual currencies

Romania's legislation provides for the first time a definition of *virtual currencies*, meaning a digital representation of the value accepted by natural or legal persons as a means of exchange (which is not issued/guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money), as well as a definition of the *custodian wallet provider*, meaning an entity that provides services to safeguard some private cryptographic keys. According to the new provisions, the Authority for the Digitalisation of Romania shall issue a technical approval for the providers of exchange services between virtual currencies and fiat currencies, and custodian wallet providers. The authorisation and/or registration procedure, and the procedure for granting and withdrawing the technical approval, shall be established by Government decision.

4. Beneficial owner

Amendments are also brought to the provisions concerning the beneficial owner, in order to clarify the methods of identifying the beneficial owner, in particular in case of foreign

corporate entities, non-profit-making legal entities (including associations and foundations) and other legal persons and entities managing and distributing funds.

Under the new provisions, the statement concerning the beneficial owner may be in authentic form, certified by a lawyer or given before the representative of the Trade Register Office, but it may also be a private document or in electronic form. The obligation to declare the beneficial owner shall also be met if on registration, the beneficial owners' identification details as well as the methods of exercising control over the respective legal person are included in the articles of incorporation.

5. Reporting entities

GEO No. 111/2020 extends the range of reporting entities, by including the following categories:

- Certified valuers, tax consultants, persons providing financial, business or accounting advice, and any other person that undertakes to provide, directly or by means of other persons to which that other person is related, material aid, assistance or advice on tax, financial, economic or professional matters, as principal business or professional activity;
- Persons practising liberal legal professions, if they assist in the setting up, operation or administration of trusts, companies, foundations or similar structures;
- Providers of exchange services between virtual currencies and fiat currencies;
- Custodian wallet providers;
- Real estate agents and developers (including when acting as intermediaries in the letting of immovable property, but only in relation to transactions for which the monthly rent amounts to the RON equivalent of EUR 10,000 or more);
- Persons trading works of art or acting as intermediaries in the trade of works of art, including when this is carried out by art galleries and auction houses, where the value of the transaction or a series of linked transactions amounts to the RON equivalent of EUR 10,000 or more;
- Persons storing or trading works of art or acting as intermediaries in the trade of works of art, when this is carried out in free zones and the value of the transaction or a series of linked transactions amounts to the RON equivalent of EUR 10,000 or more.

6. Reporting obligations

Transactions in cash, in RON or in foreign currency the minimum limit of which is the RON equivalent of EUR 10,000, including linked operations, shall be reported to the Office. According to the new provisions, linked operations are the operations with the value fragmented in tranches lower than those indicated by the law, and having common

elements, such as the parties to the transaction, the beneficial owners, the nature of the transaction or the amounts involved.

According to the new amendments, the threshold value for external transfers to and from accounts, in RON or foreign currency, reported by credit and financial institutions, is EUR 10,000. Previously, the threshold was EUR 15,000. This category includes the linked operations as well.

In the case of electronic money institutions and payment institutions operating through agents or distributors, the reporting obligations set out in Law No. 129/2019 fall exclusively on electronic money institutions and payment institutions that are Romanian legal entities, and on the single contact points established in Romania for electronic money institutions and payment institutions that are foreign legal entities.

7. KYC measures

Under the new provisions, credit institutions and financial institutions are prohibited from providing payment acceptance services for anonymous prepaid cards. However, apart from anonymous accounts, anonymous passbooks and anonymous safe-deposit boxes, in case of anonymous prepaid cards the law does not require such institutions to apply customer due diligence measures.

An element of novelty is the regulation concerning the application of standard know your customer (KYC) due diligence measures based on a remote or electronic secure identification process, regulated, recognized, approved or accepted at national level by the Authority for the Digitalisation of Romania. We expect that in the implementation of these new provisions, secondary legislative acts will be issued, to clarify the duties the Authority for the Digitalisation of Romania has in this field.

Whenever they start a new business relationship with parties bound to register information about the beneficial owner, the reporting entities must obtain proof of the beneficial owners' registration, or information from the central registers of beneficial owners.

According to the new provisions, the customer due diligence measures shall also be applied if the reporting entities have a legal obligation to contact the customer during the relevant calendar year in order to examine all the relevant information about the beneficial owner, or if the reporting entities have such obligation pursuant to the provisions concerning non-resident taxpayers.

Reporting entities are required to increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear suspicious, and the factors characteristic for potentially high-risk situations are also updated according to GEO No. 111/2020.

As regards business relationships or transactions involving high-risk third countries, GEO No. 111/2020 provides for a number of additional measures to be implemented (e.g. obtaining additional information about the customer and the beneficial owner, and about the nature

of the business relationship intended to be established, enhanced monitoring of the business relationship).

For legal persons governed by private law, trusts and any other legal construction similar to trusts a number of obligations are implemented, concerning the information about the beneficial owner, as well as the registers where such information must be recorded (organised by the Office, the Ministry of Justice, the National Agency for Fiscal Administration).

8. Designated person and internal procedures

The person or persons with duties in the application of Law No. 129/2019 shall be designated according to the extent of the activity carried out, with the approval of the management of the entity, and the documents drawn up in this connection shall be kept at the reporting entity's premises. These provisions are not applicable to natural persons - an aspect that was also provided for in the previous form of Law No. 129/2019 - and to self-employed persons acting as reporting entities.

The internal policies and rules, the internal control mechanisms and the procedures for managing risks of money laundering and terrorist financing should include the time limit by which the common elements of linked operations are relevant, as well as any other scenarios that could give rise to linked transactions.

raluca.sanucean@tuca.ro

Editors

Our lawyers specialising in **Banking and Finance Law** provide professional counselling in the regulatory and advisory fields, ranging from bank acquisitions and privatisations to structuring of bilateral, syndicated and other loan facility agreements, including the accessory transaction documentation. The group represents high-profile international and domestic commercial banks, investment banks, multilateral development banks, leasing companies, insurance companies, arrangers and other financial institutions with a presence in Romania or interested to invest in Romania. Since many financings may be part of a larger business transaction, our banking and finance lawyers work closely with lawyers from other practice groups of Țuca Zbârcea & Asociații and are well versed in completing most any kind of transaction with a financing component, including banks privatisation, bankruptcy and restructuring of banks, collateral enforcement and debt recovery, counselling of financial institutions in mergers & acquisitions projects, portfolio transfers and restructuring and disposal of non-performing loans.



Mihai Dudoiu
Partner
+4 021 204 76 36
mihai.dudoiu@tuca.ro



Gabriela Anton
Partner
+4 021 204 88 90
gabriela.anton@tuca.ro

TUCA ZBARCEA ASOCIATII

Șos. Nicolae Titulescu nr. 4-8
America House, Aripa de Vest, et. 8
Sector 1, 011141, București, România
T + 4 021 204 88 90
F + 4 021 204 88 99
E office@tuca.ro
www.tuca.ro

This material is for reference only. It does not seek to provide legal advice, which may be requested according to each specific legal issue and may not be relied upon for any purposes whatsoever. For details and clarifications on any of the topics dealt in this Legal Bulletin, please do not hesitate to contact the attorneys indicated hereinabove.