

Government of Romania

Government Emergency Ordinance no.53/21st of April 2008 for the modification and completion of the Law no. 656/2002, on the prevention and sanctioning of money laundering and on setting up of certain measures for the prevention and combating of terrorism financing

Published in the Official Gazette no. 333 of April 30, 2008

Having regards to the obligations set out for Romania subsequent to the commitments taken within the Adherence to European Union Treaty and also the necessity for implementing in the internal legislation the Directive 2005/60/EC of the European Parliament and of the Council, of 26th October 2005, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, published in the Official Journal of the European Union, series L no. 309 of 25th November 2005, and the Directive 2006/70/EC of the European Parliament and of the Council, of 1st August 2006, laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of “politically exposed person” and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of financial activity conducted on an occasional or very limited basis, published in the Official Journal of the European Union, series L no. 214 of 04th August 2006,

Whereas the deadline for the implementation by all member states was 15th of December 2007, without derogations for new member states,

Observing also the necessity for adopting new measures for the application of the Regulation (EC) no. 1781/2006 of the European Parliament and of the Council, of 15th November 2006, on information on the payer accompanying transfers of funds, published in the Official Journal of the European Union, series L no. 345 of 08th December 2006,

The urgent modification of the legal framework is necessary, as it is an extraordinary situation whose regulation cannot be postponed.

According with the provision of art. 115 para (4) of the Romania’s Constitution, republished

Romanian Government adopts the following emergency ordinance:

Article I – The Law 656/2002 on the prevention and sanctioning of money laundering and on setting up of certain measures for the prevention and combating of terrorism financing, published in the Official Gazette of Romania, Part I, no. 904, of 12 December 2002, with subsequent modifications and completions, is modified and completed as follows:

1. Paragraphs (c) and (d) of Article 2 are modified and shall comprise:

“(c) Suspicious transaction means the operation which apparently has no economical or legal purpose or the one that, by its nature and/or its unusual character in relation with the activities of the client of one of the persons referred to in Article 8, raises suspicions of money laundering or terrorist financing;

(d) External transfers in and from accounts means cross-border transfers, the way they are defined by the national regulations in the field, as well as payment and receipt operations carried out between resident and non-resident persons on the Romanian territory;”

2. Seven new paragraphs, para (e)-(k), are introduced after para (d) of Article 2, with the following content:

“(e) Credit institution means any entity that carries out one of the activities defined by article 7 para (1) point 10 of Government Emergency Ordinance no.99/2006 on credit institutions and capital adequacy, approved with modifications and completions by Law no. 227/2007;

(f) Financial institution means any entity, with or without legal capacity, other than credit institution, which carries out one or more of the activities referred to in Article 18, para (1), points (b)-(l) and (n) of Government Emergency Ordinance no.99/2006 on credit institutions and capital adequacy, approved with modifications and completions by Law no. 227/2007, including postal offices and other specialized entities that provide fund transfer services and those that carry out currency exchange. Within this category there are also:

1. Insurance and reinsurance companies and insurance/reinsurance brokers, authorized according with the provisions of Law no. 32/2000 on the insurance and insurance supervision activity, with subsequent modifications and completions, as well as the branches on the Romanian territory of the insurance and reinsurance companies and insurance and/or reinsurance intermediaries, which were authorized in other member states.

2. Financial investments service companies, investment consultancy, investment management companies, investment companies, market operators, system operators as they are defined under the provisions of Law no. 297/2004 on capital market, with subsequent modifications and completions, and of the regulations issued for its application;

(g) Business relationship means the professional or commercial relationship that is connected with the professional activities of the institutions and persons covered by article 8 and which is expected, at the time when the contact is established, to have an element of duration;

(h) Operations that seem to be linked to each other means the transactions afferent to a single transaction, developed from a single commercial contract or from an agreement of any nature between the same parties, whose value is fragmented in portions smaller than 15.000EURO or equivalent RON, when these operations are carried out during the same banking day for the purpose of avoiding legal requirements;

(i) ‘Shell bank’ means a credit institution, or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence, respectively the leadership and management activity and institution’s records are not in that jurisdiction, and which is unaffiliated with a regulated financial group.

(j) Service providers for legal persons and other entities or legal arrangements means any natural or legal person which by way of business, provides any of the following services for third parties:

1. Forming companies or other legal persons;

2. Acting as or arranging for another person to act as a director or manager of a company, or acting as associate in relation with a company with sleeping partners or a similar quality in relation to other legal persons;

3. Providing a registered office, administrative address or any other related services for a company, a company with sleeping partners or any other legal person or arrangement;

4. Acting as or arranging for another person to act as a trustee of an express trust activity or a similar legal operation;

5. Acting as or arranging for another person to act as a shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements in conformity with Community legislation or subject to equivalent international standards;

(k) Group means a group of entities, as it is defined by article 2 para (1) point 13 of Governmental Emergency Ordinance no. 98/2006 on enhanced supervision of credit institutions, insurance and/or reinsurance companies, financial investment services companies and of investment management companies all part of a financial mixture, approved with modifications and completions by Law no. 152/2007.”

3. Two new articles, article 2 index 1 and article 2 index 2, are introduced subsequent to article 2, with the following content:

“Article 2 index 1 - (1) For the purposes of the present law, politically exposed persons are natural persons who are or have been entrusted with prominent public functions, immediate family members as well as persons publicly known to be close associates of natural persons that are entrusted with prominent public functions.

(2) Natural persons, which are entrusted, for the purposes of the present law, with prominent public functions are:

- a) Heads of state, heads of government, members of parliament, European commissioners, members of government, presidential councilors, state councilors, state secretaries;
- b) Members of constitutional courts, members of supreme courts, as well as members of the courts whose decisions are not subject to further appeal, except in exceptional circumstances;
- c) Members of account courts or similar bodies, members of the boards of central banks;
- d) Ambassadors, charges d'affaires and high-ranking officers in the armed forces;
- e) Managers of the public institutions and authorities;
- f) Members of the administrative, supervisory and management bodies of State-owned enterprises.

(3) None of the categories set out in points (a) to (f) of para (2) shall include middle ranking or more junior officials. The categories set out in points (a) to (f) of para (2) shall, where applicable, include positions at Community and international level.

(4) Immediate family members of the politically exposed persons are:

- a) The spouse;
- b) The children and their spouses;
- c) The parents

(5) Persons publicly known to be close associates of the natural persons who are entrusted with prominent public functions, are the natural persons well known for:

- a) The fact that together with one of the persons mentioned in para (2), hold or have a joint significant influence over a legal person, legal entity, or legal arrangement or are in any close business relations with these persons
- b) Hold or have joint significant influence over a legal person, legal entity or legal arrangement set up for the benefit of one of the persons referred to in paragraph (2)

(6) Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence measures, where a person has ceased to be entrusted with a prominent public function within the meaning of paragraph (2) for a period of at least one year, institutions and persons referred to in Article 8 shall not consider such a person as politically exposed.

Article 2 index 2 – (1) For the purposes of the present law, beneficial owner means any natural person who ultimately owns or controls the customer and/or the natural person on whose behalf or interest a transaction or activity is being conducted, directly or indirectly.

(2) The beneficial owner shall at least include:

a) in the case of corporate entities:

1. the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership over a sufficient percentage of the shares or voting rights sufficient to ensure control in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards. A percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;

2. the natural person(s) who otherwise exercises control over the management of a legal entity;

b) in the case of legal entities, other than those referred to in para (a), and other entities or legal arrangements, which administer and distribute funds:

1. The natural person who is the beneficiary of 25 % or more of the property of a legal person or other entities or legal arrangements, where the future beneficiaries have already been determined;
2. Where the natural persons that benefit from the legal person or entity have yet to be determined, the group of persons in whose main interest the legal person, entity or legal arrangement is set up or operates;
3. The natural person(s) who exercises control over 25 % or more of the property of a legal person, entity or legal arrangement.”
4. Paragraphs (1), (1 index 1), (2) and (3) of Article 3 are modified and shall comprise:
“Article 3 - As soon as an employee of a legal or natural person of those stipulated in article 8, has suspicions that a transaction, which is on the way to be performed, has the purpose of money laundering or terrorism financing, he shall inform the person appointed according to art. 14 para (1), which shall notify immediately the National Office for Prevention and Control of Money Laundering, hereinafter referred to as “the Office”. The appointed person shall analyze the received information and shall notify the Office about the reasonably motivated suspicions. The Office shall confirm the receipt of the notification.
(1 index 1) The National Bank of Romania, National Securities Commission, Insurance Supervision Commission or the Supervision Commission for the Private Pension System shall immediately inform the Office with respect to the authorization or refusal of the transactions referred to in article 28 of the Law no. 535/2004 on the prevention and combating terrorism, also notifying the reason for which such solution was given.
(2) If the Office considers as necessary, it may dispose, based on a reason, the suspension of performing the transaction, for a period of 48 hours. When the 48-hour period ends in a non-working day, the deadline extends for the first working day. The amount, in respect of which instructions of suspension were given, shall remain blocked on the account of the holder until the expiring of the period for which the suspension was ordered or, as appropriate, until the General Prosecutor’s Office by the High Court of Cassation and Justice gives new instructions, accordingly with the law.
(3) If the Office that the period mentioned in para (2) is not enough, it may require to the General Prosecutor’s Office by the High Court of Cassation and Justice, based on a reason, before the expiring of this period, the extension of the suspension of the operation for another period up to 72 hours. When the 72-hour period ends in a non-working day, the deadline extends for the first working day. The General Prosecutor’s Office by the High Court of Cassation and Justice may authorize only once the required prolongation or, as the case may be, may order the cessation of the suspension of the operation. The decision of the General Prosecutor’s Office by the High Court of Cassation and Justice is notified immediately to the Office.”
5. Paragraphs (6)-(9) of Article 3 are modified and shall comprise:
“(6) The persons provided in the article 8 or the persons designated accordingly to the article 14 para (1) shall report to the Office, within 10 working days, the carrying out of the operations with sums in cash, in RON or foreign currency, whose minimum threshold represents the equivalent in RON of 15,000EUR, indifferent if the transaction is performed through one or more operations that seem to be linked to each other.
(7) The provisions of the para (6) shall apply also to external transfers in and from accounts for amounts of money whose minimum limit is the equivalent in RON of 15,000EUR.
(8) The persons referred to in article 8 para (1) letters e) and f) have no obligation to report to the Office the information they receive or obtain from one of their customers during the process of determining the customer’s legal status or during its defending or representation in certain legal procedures or in connection with therewith, including while providing consultancy with respect to the initiation of certain legal procedures, according to the law, regardless of whether such information has been received or obtained before, during, or after the closure of the procedures.
(9) The form and contents of the report for the operations provided for in the para (1), (6) and (7) shall be established by decision of the Office’s Board, within 30 days from the date of coming into force of the present law. The reports provided for in articles (6) and (7) are forwarded to the

Office once every 10 working days, based on a working methodology set up by the Office.

6. Three new paragraphs, (10), (11) and (12), are introduced after the paragraph (9) of article 3, with the following content:

“(10) In the case of persons referred to in article 8 para (e) and (f), the reports are forwarded to person designate by the leading structures of the independent legal profession, which have the obligation to transmit them to the Office within three days from reception, at most. The information is sent to the Office unmodified.

(11) National Customs Authority communicates to the Office, on a monthly basis, all the information it holds, according with the law, in relation with the declarations of natural persons regarding cash in foreign currency and/or national one, which is equal or above the limit set forth by the Regulation (CE) no. 1889/2005 of European Parliament and Council on the controls of cash entering or leaving the Community, held by these persons while entering or leaving the Community. National Customs Authority shall transmit to the Office immediately, but no later than 24 hours, all the information related to suspicions on money laundering or terrorism financing which is identified during its specific activity.

(12) The following operations, carried out in his own behalf, are excluded from the reporting obligations provided by para (6): between credit institution, between credit institutions and the National Bank of Romania, between credit institutions and the state treasury, between National Bank of Romania and state treasury. Other exclusions, from the reporting obligations provided by para (6), may be established for a determined period, by Governmental Decision, subsequent to the Office’s Board proposal.”

7. Paragraph (3) of article 5 is modified and shall have the following content:

“(3) The professional and banking secrecy where the persons provided for in article 8 are kept is not opposable to the Office”

8. Paragraphs (4)-(6) of article 6 are modified and shall have the following content:

“(4) Following the receipt of notifications, based on a reason, General Prosecutor’s Office by the High Court of Cassation and Justice or the structures within Public Ministry, competent by law, may require the Office to complete such notifications.

(5) The Office is obliged to put at the disposal of the General Prosecutor’s Office by the High Court of Cassation and Justice or the structures within Public Ministry, competent by law, at their request, the data and information obtained according to the provisions of the present law.

(6) The General Prosecutor’s Office by the High Court of Cassation and Justice or the structures within Public Ministry, competent by law, that formulated requests in accordance with the provisions of para (4), shall notify to the Office, quarterly, the progress in the settlement of the notifications submitted, as well as the amounts on the accounts of the natural or legal persons for which blocking is ordered following the suspension carried out or the provisional measures imposed.

9. In article (6), a new para (7 index 1) is introduced following to para (7), and shall have the following content:

“(7 index 1) The Office provides the persons referred to in article (8) para (a) and (b), whenever possible, under a confidentiality regime and through a secured way of communication, with information about clients, natural and/or legal persons which are exposed to risk of money laundering and terrorism financing.”

10. Article 7 is modified and shall have the following content:

“(7) Article 7 – The application in good faith, by the natural and/or legal persons, of the provisions of articles (3)-(5) may not attract their disciplinary, civil or penal responsibility.”

11. Article 8 is modified and shall have the following content:

“Article 8 – The provisions of this law shall be applied to the following natural or legal persons:

- a) credit institution and branches in Romania of the foreign credit institutions;
- b) financial institutions, as well as branches in Romania of the foreign financial institutions;
- c) private pension funds administrators, in their own behalf and for the private pension

funds they manage, marketing agents authorized for the system of private pensions;

- d) casinos;
- e) auditors, natural and legal persons providing tax and accounting consultancy;
- f) public notaries, lawyers and other persons exercising independent legal profession, when they assist in planning or executing transactions for their customers concerning the purchase or sale of immovable assets, shares or interests or good will elements, managing of financial instruments or other assets of customers, opening or management of bank, savings, accounts or of financial instruments, organization of contributions necessary for the creation, operation, or management of a company, creation, operation, or management of companies, undertakings for collective investments in transferable securities, other trust activities or when they act on behalf of and their clients in any financial or real estate transactions;
- g) persons, other than those mentioned in para (e) or (f), providing services for companies or other entities;
- h) persons with attributions in the privatization process;
- i) real estate agents;
- j) associations and foundations;
- k) other natural or legal persons that trade goods and/or services, provided that the operations are based on cash transactions, in RON or foreign currency, whose minimum value represents the equivalent in RON of 15000EUR, indifferent if the transaction is performed through one or several linked operations.”

12. Two new articles (8 index 1) and (8 index 2) are introduced after the article 8 and shall have the following content:

“Article 8 index 1 – In performing their activity, the persons referred to in article 8 are obliged to adopt adequate measures on prevention of money laundering and terrorism financing and, for this purpose, on a risk base, apply standard customer due diligence measures, simplified or enhanced, which allow them to identify, where applicable, the beneficial owner.

Article 8 index 2 – Credit institutions shall not enter into or continue a correspondent banking relationship with a shell bank or with a bank that is known to permit its accounts to be used by a shell bank”

13. Article 9 is modified and shall have the following content:

“Article 9 – (1) The persons referred to in the article 8 are obliged to apply standard customer due diligence measures in the following situations:

- a) when establishing a business relationship;
- b) when carrying out occasional transactions amounting to EUR 15 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
- c) when there are suspicions that the transaction is intended for money laundering or terrorist financing, regardless of the derogation on the obligation to apply standard customer due diligence measures, provided by the present law, and the amount involved in the transaction;
- d) when there are doubts about the veracity or adequacy of previously obtained customer identification data.
- e) when purchasing or exchanging casino chips with a minimum value, in equivalent RON, of 2000 EUR.

(2) When the sum is not known in the moment of accepting the transaction, the natural or legal person obliged to establish the identity of the customers shall proceed to their rapid identification, when it is informed about the value of the transaction and when it established that the minimum limit provided for in para (1) (b) was reached.

(3) The persons referred to in the article 8 are obliged to ensure the application of the provisions of the present law to external activities or the ones carried about by agents.

(4) Credit institutions and financial institutions must apply customer due diligence and record keeping measures to all their branches from third countries, and these must be equivalent at least with those provided for in the present law.”

14. Two new articles (9 index 1) and (9 index 2) are introduced following the article 9, with the following content:

“Article 9 index 1 - The persons referred to in the article 8 shall apply standard customer due diligence measures to all new customers and also, as soon as possible, on a risk base, to the existing clients.

Article 9 index 2 – (1) Credit institutions and financial institutions shall not open and operate anonymous accounts, respectively accounts for which the identity of the holder or owner is not known and documented accordingly.

(2) When applying the provisions of article 9 index 1, the persons referred to in the article 8 shall apply standard customer due diligence measures to all the owners and beneficiaries of existing anonymous accounts as soon as possible and in any event before such accounts or are used in any way.”

15. Article 12 is modified and shall have the following content:

“Article 12. - The persons referred to in the article 8 shall apply simplified customer due diligence measures for the following situations:

a) for life insurance policies, if the insurance premium or the annual installments are lower or equal to the equivalent in RON of the sum of 1000EUR or if the single insurance premium paid is up to 2500EUR, the equivalent in RON. If the periodic premium installments or the annual sums to pay are or are to be increased in such a way as to be over the limit of the sum of 1000EUR, respectively of 2500EUR, the equivalent in RON, standard customer due diligence measures shall be applied;

b) for the situation of the subscription to pension funds;

c) for the situation of electronic currency defined accordingly with the Law, for the situations and conditions provided by the regulations on the present law;

d) when a customer is a credit or financial institution, according with article 8, from a Member State of European Union or of European Economic Area or, as appropriate, a credit or financial institution in a third country, which has similar requirements with those laid down by the present law and are supervised for their application;

e) for other situations, regarding clients, transactions or products, that pose a low risk for money laundering and terrorism financing, provided by the regulations on the application of the present law.

16. A new article, Article 12 index 1, is being introduced following article 12, with the following content:

“Article 12 index 1 – (1) In addition to the standard customer due diligence measures, the persons referred to in the article 8 shall apply enhanced due diligence measures for the following situations which, by their nature, may pose a higher risk for money laundering and terrorism financing:

a) for the situation of persons that are not physically present when performing the transactions;

b) for the situation of correspondent relationships with credit institutions from states that are not European Union’s Member States or do not belong to the European Economic Area;

c) for the transactions or business relationships with politically exposed persons, which are resident in another European Union Member State or European Economic Area member state, or a third country.

(2) The persons referred to in the article 8 shall apply enhanced due diligence measures for other cases than the ones provided by para (1), which, by their nature, pose a higher risk of money laundering or terrorism financing.”

17. Paragraph (1) of the article 14 is modified and shall have the following content:

“(1 index 1) The persons referred to in the article 8 (a)-(d), (g)-(j), as well as the leading structures of the independent legal professions mentioned by article 8 (e) and (f) shall designate one or several persons with responsibilities in applying the present law, whose names shall be communicated to the Office, together with the nature and the limits of the mentioned responsibilities, and shall establish adequate policies and procedures on customer due diligence, reporting, secondary and operative record keeping, internal control, risk assessment and management, compliance and communication management, in order to prevent and stop money laundering and terrorism financing operations, ensuring the proper training of the employees. Credit institutions and financial institutions are obliged

to designate a compliance officer, subordinated to the executive body, who coordinates the implementation of the internal policies and procedures, for the application of the present law.

18. Two new paragraphs, (3) and (4), are introduced following the paragraph (2) of article 14, which shall have the following content:

“(3) The provisions of para (1), (1 index 1) and (2) are not applicable for the natural and legal persons provided by article 8 para (k).

(4) Credit and financial institutions must inform all their branches in third states about the policies and procedures established accordingly with para (1 index1).”

19. The paragraph (1) of article 16 is abrogated:

20. The paragraph (2) of article 16 is modified and shall have the following content:

“(2) The Office may organize training seminars in the field of money laundering and terrorism financing. The Office and the supervision authorities may take part in the special training programs of the representatives of the persons referred to in article 8”

21. Article 17 is modified and shall have the following content:

“Article 17 – (1) The implementation modality of the provisions of the present law is verified and controlled, within the professional attributions, by the following authorities and structures:

- a) The prudential supervision authorities, for the persons that are subject to this supervision;
- b) Financial Guard, as well as any other authorities with tax and financial control attributions, according with the law;
- c) The leading structures of the independent legal professions, for the persons referred to in article 8 (e) and (f);
- d) The Office, for all the persons mentioned in article 8, except those for which the implementation modality of the provisions of the present Law is verified and controlled by the authorities and structures provided by para (a).

(2) When the data obtained indicates suspicions of money laundering, terrorism financing or other violations of the provisions of this Law, the authorities and structures provided for in para (1) (a) – (c) shall immediately inform the Office.

(3) The Office may perform joint checks and controls, together with the authorities provided for in the para (1) (b) and (c).”

22. Three new paragraphs, (4), (5) and (6) are introduced after paragraph (3) of article 18, with the following content:

“(4) The following deeds performed while exercising job attributions shall not be deemed as breaches of the obligation provided for in para (2):

- a) providing information to competent authorities referred to in article 17 and providing information in the situations deliberately provided by the law;
- b) providing information between credit and financial institutions from European Union’s Member States or European Economic Area or from third states, that belong to the same group and apply customer due diligence and record keeping procedures equivalent with those provided for by the present Law and are supervised for their application in a manner similar with the one regulated by the present law;
- c) providing information between persons referred to in article 8 (e) and (f), from European Union’s Member States or European Economic Area, or from third states which impose equivalent requirements, similar to those provided for by the present Law, persons that carry on their professional activity within the framework of the same legal entity or the same structure in which the shareholders, management or compliance control are in common.
- d) providing information between the persons referred to in article 8 (a), (b), (e) and (f), situated in European Union’s Member States or European Economic Area, or from third states which impose equivalent requirements, similar to those provided for by the present Law, in the situations related to the same client and same transaction carried out through two or more of the above mentioned persons, provided that these persons are within the same professional category and are subject to equivalent requirements regarding professional secrecy and the protection of personal data;

(5) When the European Commission adopts a decision stating that a third state do not fulfill the requirements provided for by the para (4) (b) (c) and (d), the persons referred to in article 8 and their employees are obliged not to transmit to this state or to institutions or persons from this state, the information held related to money laundering and terrorism financing.

(6) It is not deemed as a breach of the obligations provided for in para 2, the deed of the persons referred to in article 8 (e) and (f) which, according with the provisions of their statute, tries to prevent a client from engaging in criminal activity.”

23. A new para, para (2 index 1) is introduced following para (2) of article 19, which shall have the following content:

“(2 index 1) The Office carries out the analysis of suspicious transactions:

a) when notified by any of the persons referred to in article 8;

b) ex officio, when finds out, in any way, of a suspicious transaction.”

24. A new para, para (5 index 1) is introduced following para (5) of article 19, which shall have the following content:

“(5 index 1) The deliberative and decisional activity provided for in para (5) refers to the specific cases analyzed by the Office’s Board. The Office’s Board decides over the economic and administrative matters, only when requested by the President.

25. Paragraph (16) of article 19 is modified and shall have the following content:

“(16) The Office may participate in the activities organized by international organizations in the field and may be member of these organization.”

26. Paragraph (1) (b) of article 19 is modified and shall have the following content:

“(b) failure to comply with the obligations referred to in article 5 para (2), article 9, 9 index 1, 9 index 2, article 12 index 1 para (1), article 13-15 and article 17.”

27. Paragraph (4) of article 22 is modified and shall have the following content:

“(4) The infringements are ascertained and the sanctions, referred to in para (2), are applied by the representatives, authorized by case, by the Office or other authority competent by law to carry out the control. When the supervision authorities carry out the control, the infringements are ascertained and the sanctions are applied by the representatives, authorized and specifically designated by those authorities.”

28. A new para, para (4 index 1) is introduced following para (4) of article 22, which shall have the following content:

“(4 index 1) In addition to the infringement sanctions, specific sanctioning measures may be applied by the supervision authorities, according with their competencies, for the deeds provided for by para (1)”

29. Two new paragraphs, (4), (5) are introduced after paragraph (3) of article 23, with the following content:

“(4) If the deed was committed by a legal person, one or more of the complementary penalties referred to in article 53 index 1, para (3) (a) –(c) of the Criminal Code is applied, by case, in addition to the fine penalty.

(5) Knowledge, intent or purpose required as an element of the activities mentioned in paragraphs (1) may be inferred from objective factual circumstances.”

30. A new article, (23 index 1), is introduced following article 23, which shall have the following content:

“Article 23 index 1 – The offender for the crime referred to in article 23, that during the criminal procedure denounces and facilitates the identification and prosecution of other participants in the offence, shall benefit of a half reduction of the penalty limits provided for by law.”

31. Article 26 is modified and shall have the following content:

“Article 26 – In the case of the offences referred to in articles 23 and 24 and the terrorism financing offences, the banking secrecy and professional secrecy shall not be opposable to the prosecution bodies nor to the courts of law. The data and information are transmitted upon written request to the prosecutor or to the criminal investigation bodies, if their request has previously been

authorized by the prosecutor, or to the courts of law.”

32. A new point (d) is introduced after the point © para (1) of article 27, which shall have the following content:

“d) Supervised delivery of money amounts”

33. A new para, para (5) is introduced following para (4) of article 27, which shall have the following content:

“(5) The measure referred to in para (1) (d) may be disposed by the prosecutor and authorized by reasoned ordinance which, in addition to the mentions referred to in article 2003 of Criminal Procedure Code, should comprise the following:

a) the solid ground that justify the measure and the motives for which the measure is necessary;

b) details regarding the money that are subject of the supervision;

c) time and place of the delivery or, upon case, the itinerary that shall be followed in order to carry out the delivery, provided these data are known;

d) the identification data of the persons authorized to supervise the delivery.”

34. A new article, (27 index 2), is introduced following article 27 index 1, which shall have the following content:

“Article 27 index 2 – (1) The General Prosecutor’s Office by the High Court of Cassation and Justice transmits to the Office, on a quarterly bases, copies of the definitive court decisions related to the offence provided for in article 23.”

The Office holds the statistical account of the persons convicted for the offence provided for in article 23.”

35. Article 29 is modified and shall have the following content:

“The minimum limits of the operations referred to in article 9 para (1) (b) and (e) and the maximum limits of the amounts provided for by article 12 (a) may be modified by Government Decision, subsequent to the Office’s proposal.”

36. Following the article 31 the next mention is introduced:

“By the present law, the provisions of articles 1 para (5), article 2 para (1), article 3 points 1,2 and 6-10, article 4, 5, 6, 7, article 8 para 2, article 9 para (1), (5) and (6), article 10 para (1), article 11 para (1)-(3) and (5), article 13, 14, 17, 20, 21, 22, 23, 25, 26, 27, article 28 para (2)-(7), article 29, article 31 para (1) and (3), article 32, article 33 para (1) and (2), article 34, article 35 para (1) and (3), article 37 para (1)-(3) and (5) as well as article 39 of the Directive 2005/60/EC of the European Parliament and of the Council, of 26th October 2005, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, published in the Official Journal of the European Union, series L no. 309 of 25th November 2005 and article 2 of the Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of “politically exposed person” and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of financial activity conducted on an occasional or very limited basis, published in the Official Journal of the European Union, series L no. 214 of 04th August 2006, have been transposed.”

Article II – (1) The provisions of points 13-17 of article I enter into force in 45 days from the date of present ordinance’s publication in the Official Gazette of Romania, Part I. The legal provisions, in force before this date, shall be applicable until the new ones enter into force.

The Government adopts, by decision, within 15 days from the entering into force of the present ordinance, subsequent to the consultation of prudential supervision authorities, the taxfinancial control authorities, the leading structures of independent legal professions and the National Office for Prevention and Control of Money Laundering, a regulation on the application of Law no.656/2002 on the prevention and sanctioning of money laundering and on setting up of certain measures for the prevention and combating of terrorism financing, with subsequent modifications and completions, which will detail the standard, simplified or enhanced customer due diligence measures, as well as the content and conditions for applying law no. 656/2002, with subsequent modifications

and completions.

(3) The National Office for Prevention and Control of Money Laundering adopts the working methodology provided for by the article 3 para (9) of Law no. 656/2002, with subsequent modifications and completions, within 30 days from the moment of present ordinance's entering into force.

(4) Within 45 days from the moment of present ordinance's entering into force, prudential supervision authorities, the tax-financial control authorities of the persons referred to in article 8 of Law no. 656/2002, with subsequent modifications and completions, as well as the leading structures of independent legal professions issue, according with their competency, standards on customer due diligence.

(5) Within 30 days from the moment of present ordinance's entering into force, the leading structures of independent legal professions shall conclude cooperation protocols with the National Office for Prevention and Control of Money Laundering and the existing protocols shall be updated based on the provisions of the present emergency ordinance.

Article III – (1) For the application of the Regulation (EC) no. 1781/2006 of the European Parliament and of the Council, of 15th November 2006, on information on the payer accompanying transfers of funds, published in the Official Journal of the European Union, series L no. 345 of 08th December 2006, the following authorities are designated, as responsible authorities, for the supervision of compliance with the obligations regarding the information on the payer accompanying transfers of funds:

a) National Bank of Romania, for credit institutions;

b) National Office for Prevention and Control of Money Laundering, for any other legal person that provides fund transfer services.

(2) The fund transfers referred to in article 3 para 6 of the regulations are excluded from the application of the Regulation (EC) no. 1781/2006 of the European Parliament and of the Council, of 15th November 2006

(3) The following deeds shall be deemed as infringements:

a) breaching the obligations referred to by article 9 para (2) final thesis of the Regulation (EC) no. 1781/2006 of the European Parliament and of the Council, of 15th November 2006

b) breaching the obligations referred to by article 4, article 5 para (1), (2), (4) and (5), article (6) para (2), article (7) para (2), article 8, article 9 para (1) and article (2) first thesis, article 11, article 12, article 13 para (3), (4) and (5) and article 14 first thesis of Regulation (EC) no. 1781/2006 of the European Parliament and of the Council, of 15th November 2006.

(4) The infringements referred to in para (3) (a) are sanctioned by fine ranging from 10000RON to 30000RON and the infringements referred to in para (3) (b), by fine ranging from 15000RON to 50000RON.

(5) The infringements are ascertained and the sanctions are applied by authorized representatives specifically designated by National Bank of Romania and National Office for Prevention and Control of Money Laundering, according with their competencies.

(6) The requirements provided by article 22 of Law no. 656/2002, with subsequent modifications and completions, apply accordingly.

Article IV - The Law no. 656/2002, on the prevention and sanctioning of money laundering and on setting up of certain measures for the prevention and combating of terrorism financing, published in the Official Gazette of Romania, Part I, no. 904 from 12 of December 2002, with subsequent modifications and completions, as well as with the modifications and completions set up by the present emergency ordinance, shall be republished, in the Official Gazette of Romania, Part I, after its approval by law, and the texts will receive a new numbering.

PRIME MINISTER
CALIN POPESCU TARICEANU

COUNTERSIGNS

Ministry of Justice
Catalin Marian Predoiu

Ministry of Interior and
Administrative Reform
Liviu Radu

Department for European Affaires
Adrian Ciocanea

Ministry of Economy and Finance
Catalin Doica