NATIONAL BANK OF MOLDOVA

D E C I S I O N
for the approval of the Regulation on regulatory technical standards on the supplementary supervision of financial conglomerates

No 31 of 13.02.2020
(in force as of 13.04.2020)

Official Monitor of the Republic of Moldova No 75-83 of 13.03.2020, Art.294

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REGISTERED:
by the Ministry of Justice
of the Republic of Moldova
No 1542 of February 28, 2020
Minister ____ Fadei NAGACEVSCHI

Pursuant to Art.7, Art.8 paragraph (2) and paragraph (6) of the Law No 250/2017 on the supplementary supervision of banks, insurers/reinsurers, and investment firms in a financial conglomerate (Official Monitor of the Republic of Moldova, 2017, No 464-470, Art.794), the Executive Board of the National Bank of Moldova

DECIDES:

To approve the Regulation on regulatory technical standards on the supplementary supervision of financial conglomerates (here enclosed).

CHAIRMAN
OF THE EXECUTIVE BOARD **Octavian ARMAȘU**

No 31. Chișinău, February 13, 2020.

Approved
by the Decision of the Executive Board
of the National Bank of Moldova
No 31 of February 13, 2020

REGULATION
on regulatory technical standards for the supplementary supervision of financial conglomerates

The current Regulation:

- partially transposes **Annexes I and II to Directive 2002/87/EC** of the European Parliament and of the Council of December 16, 2002 **on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate** and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council, published in the Official Journal of the European Union L 35 of February 11, 2003;
- partially transposes **Commission Delegated Regulation (EU) No 342/2014** of January 21, 2014, supplementing Directive 2002/87/EC of the European Parliament and of the Council and Regulation (EU) No 575/2013 of the European Parliament and of the Council **on regulatory technical standards for the application of methods for the calculation of capital adequacy requirements for financial conglomerates**;

- transposes **Commission Delegated Regulation (EU) 2015/2303** of July 28, 2015, supplementing Directive 2002/87/EC of the European Parliament and of the Council **with regard to regulatory technical standards specifying definitions and coordination of supplementary supervision of risk concentration and intra-group transactions** (Text with EEA relevance).

Chapter I. GENERAL PROVISIONS

1. This Regulation shall apply to regulated entities, legal persons licensed/authorized according to the applicable sectoral rules, which are subject to supplementary supervision exercised by the coordinator at the financial conglomerate level.

2. The Regulation on regulatory technical standards for the supplementary supervision of financial conglomerates (hereinafter - Regulation) sets out the technical principles and calculation methods for the purposes of determining own funds and the supplementary capital adequacy ratio requirement for financial conglomerates, as well as provisions for the determination of materiality of intra-group transactions and risk concentration.

3. The terms and expressions used in this Regulation shall have the meanings provided in Law No 250/2017 on the supplementary supervision of banks, insurers/reinsurers, and investment firms in a financial conglomerate (hereinafter - Law No 250/2017) and in the sectoral rules.

4. For the purposes of this Regulation, the notional solvency requirement is the capital requirement that the unregulated entity in a financial conglomerate must comply with under the sectoral rules that would apply to it if it were a regulated entity in the financial sector concerned. The notional solvency requirement of a mixed financial holding company shall be calculated in accordance with the sectoral rules of the most important subsector of the financial sector within the financial conglomerate.

Chapter II. TECHNICAL PRINCIPLES

Section 1
Technical principles on capital adequacy ratio

5. The calculation of the supplementary capital adequacy requirements for regulated entities in a financial conglomerate shall be carried out in accordance with the technical principles and one of the methods provided in this Regulation, which has been selected based on the coordinator's decision.

6. Regulated entities or the mixed financial holding of a financial conglomerate shall apply the consistent method of calculation on a continuous basis.

7. Regardless of the method used, where the entity is a subsidiary which has a solvency deficit or, in the case of an unregulated entity in the financial sector, a notional solvency deficit, or the total solvency deficit of the subsidiary shall be taken into account. If, in such a case, the liability of the parent undertaking owning part of the capital is limited to that part of the capital, the coordinator may allow the solvency deficit of the subsidiary to be considered in a proportionate manner.

8. Where there is no joint venture between entities of the same financial conglomerate, the coordinator shall, after consulting the other competent authorities involved, determine which proportionate share is to be taken into account, having regard to the liability resulting from the existing relationship.

Section 2

Elimination of multiple use of own funds and the creation of own funds within the group

9. Own funds/own capital (hereinafter - own funds) arising directly or indirectly from intra-group transactions shall not be included in the calculation of the supplementary capital adequacy requirements at the financial conglomerate level.

10. It shall be prohibited to use multiple elements that may be taken into account in the calculation of capital at the level of the financial conglomerate ("overlapping use of capital") and the formation of capital within the group.

11. In order to ensure that overlapping use of own funds and intra-group provision of own funds is eliminated, competent authorities shall apply by analogy the relevant principles set out in the applicable sectoral rules.

12. In the case of a capital shortfall at the financial conglomerate level, only the capital elements eligible according to the sectoral rules ("cross-sector capital") shall be taken into account for the verification of compliance with the additional solvency requirements.

13. Where sectoral rules provide for limitations on the inclusion of certain capital instruments that could be considered as cross-sector capital, these limitations shall apply *mutatis mutandis* when calculating capital at the financial conglomerate level.

Section 3
Transferability and availability of own funds

14. When calculating capital at the level of the financial conglomerate, the competent authorities shall take into account the availability and effective transferability of capital between the different entities in the group, having regard to the objectives set out in the capital adequacy ratio rules.

15. The own funds recognized according to the sectoral rules at the level of a regulated entity that exceed the own funds necessary to meet the sectoral solvency requirements shall not be included when calculating the own funds of a financial conglomerate or the sum of the own funds of each regulated and unregulated financial sector entity in a financial conglomerate, unless there are no practical or legal impediments to the transfer of funds between entities in the financial conglomerate.

16. When transmitting to the coordinator the calculation of the capital adequacy at the level of the financial conglomerate, the entity referred to in Article 7(6) of Law 250/2017 shall also provide the coordinator with evidence of compliance with paragraph 15.

Section 4
Subsector-specific own funds

17. Subsector-specific own funds are elements of own funds available at the level of a regulated entity that are eligible to cover the risks related to the recognizing subsector and are not considered eligible to cover the risks of other subsectors of the financial sector.

18. For the purposes of paragraph 17, the subsector specific own funds shall not be attributed to:

1) core tier 1 own funds, additional tier 1 own funds items or tier 2 own funds items within the meaning of the Regulation on banks' own funds and capital requirements, approved by Decision of the Executive Board of the National Bank of Moldova No 109/2018 (hereinafter - Regulation No 109/2018).

2) the capital of insurers/reinsurers, which represents the available solvency margin within the meaning of Law No 407/2006 on Insurance and the normative acts issued in its application;

3) the capital of investment companies within the meaning of Law No 171/2012 on the capital market and the normative acts issued in its application.

Section 5
Deficit of own funds at the financial conglomerate level

19. In the case of a deficit of own funds at financial conglomerate level, only own funds items that are eligible under both the sectoral rules for the banking/non-banking subsector and the rules for the insurance subsector shall be used to cover that deficit, subject to paragraph 15.

20. For the purposes of paragraph 19, own funds at the financial conglomerate level shall mean own funds including own funds items, as referred to in points 1)- 3 of paragraph 18.

Section 6
Own funds and solvency requirements

21. When the rules for the insurance subsector are to be applied, the solvency requirements laid down pursuant to Law No 407/2006 on insurance, including any capital increase applied in accordance with that Law, shall be considered as solvency requirements for the purpose of calculating supplementary capital adequacy requirements.

22. When the rules for the banking subsector are to be applied, own funds requirements as laid down in Regulation No 109/2018 and own funds requirements exceeding those requirements, pursuant to Law 202/2017 on the activity of banks, including the requirement resulting from the internal capital adequacy assessment process and the combined buffer requirement, are considered solvency requirements for the purpose of calculating supplementary capital adequacy requirements.

23. When the rules for the investment services subsector are to be applied, the capital requirements as laid down under Law No 171/2012 on the capital market, shall be considered as solvency requirements for the purpose of calculating supplementary capital adequacy requirements.

24. Subject to paragraphs 37-39, the own funds of the financial conglomerate and the solvency requirements shall be calculated in accordance with the definitions and ceilings set out in the relevant sectoral rules.

25. The own funds of investment trust management companies shall be calculated in accordance with the provisions of Law No 171/2012 on the capital market.

Section 7
Cross-sectoral holdings of capital instruments

26. Where an entity of a financial conglomerate that is predominantly active in the banking/non-banking or investment subsector holds instruments in a financial sector entity which belongs to the insurance subsector, which are deducted according to paragraphs 33 or 48, this holding does not give rise to any additional capital adequacy requirements at the financial conglomerate level.

27. Where the application of paragraph 26 results in a direct change in the amount of expected losses under the internal models approach to credit risk rating within the meaning of Law No 202/2017 on the activity of banks, an amount equivalent to this change shall be added to the own funds of the financial conglomerate.

Section 8
Notional own funds and notional solvency requirements for unregulated financial sector entities

28. Where a mixed financial holding company owns instruments in an unregulated financial sector entity, the notional own funds and notional solvency requirements for that entity shall be calculated in accordance with the sectoral rules of the most important subsector within the financial conglomerate.

29. For an unregulated financial sector entity other than one referred to in paragraph 28, notional own funds and notional solvency requirements shall be calculated in accordance with the sectoral rules of the financial sector closest to the non-regulated financial sector entity. The determination of the nearest financial sector shall be based on the relevant entity's range of activities and the extent to which it carries out those activities. If it is not possible to clearly identify the closest financial sector, the sectoral rules of the most important subsector of the financial sector within the financial conglomerate shall be used.

30. The sectoral rules applied in the calculation of the supplementary capital adequacy ratio requirements shall include any transitional or retention provisions for capital instruments that apply at sectoral level.

Chapter III. TECHNICAL CALCULATION METHODS

Section 1
Specification of the technical calculation under the accounting consolidation method

31. The own funds of a financial conglomerate shall be calculated on the basis of the consolidated financial statements according to the applicable accounting framework.

32. Financial conglomerates that are predominantly active in the banking/non-banking or investment subsector, when calculating the own funds of the financial conglomerate in the case of unconsolidated investments, the following treatments apply:

1) significant non-consolidated investments held in a financial sector entity within the meaning of paragraphs 52 and 53 of Regulation No 109/2018, which belongs to the insurance subsector, shall be deducted entirely from the conglomerate's own funds;

2) non-consolidated investments, other than those referred to in paragraph (1), held in a financial sector entity which is part of the insurance subsector, shall be deducted in full from the conglomerate's own funds in accordance with paragraphs 56 to 61 of Regulation 109/2019.

33. Subject to paragraph 32, any own funds issued by an entity belonging to a financial conglomerate and held by another entity within that financial conglomerate shall be deducted from the conglomerate's own funds if they have not been eliminated in the accounting consolidation process.

34. An undertaking which is a jointly controlled entity within the meaning of the relevant accounting framework is treated in accordance with the sector-specific consolidation rules.

35. Where an entity falling within the scope of Law 407/2006 on insurance is part of a financial conglomerate, the calculation of the additional capital adequacy requirements at the level of the financial conglomerate shall be based on the valuation of the assets and liabilities calculated in accordance with that law and the regulations developed in its application.

36. Where asset or liability values are subject to prudential filters and deductions in accordance with Regulation 109/2018, the asset or liability values used for the calculation of the supplementary capital adequacy ratio requirements shall be those attributable to the relevant entities under that Regulation, except for assets and liabilities attributable to other entities within the financial conglomerate.

37. Where sectoral rules require the calculation of a ceiling or a limit, the ceiling or limit at conglomerate level shall be calculated on the basis of the consolidated financial conglomerate data and after the deductions laid down in paragraphs 32 and 33.

38. For the purpose of calculating the ceilings or limits, the regulated entities belonging to a financial conglomerate which fall within the scope of the consolidated situation of a bank, pursuant to the regulatory act of the National Bank of Moldova on supervision of banks on a consolidated basis, are taken into account together.

39. For the purpose of calculating the ceilings or limits, the regulated entities belonging to a financial conglomerate which are subject to supervision on a consolidated basis in accordance with the Law No 407/2006 on insurance and the regulatory acts issued for the application of that Law, are taken into account together.

40. For the purpose of calculating the ceilings or limits at the level of the regulated entity, the regulated entities in a financial conglomerate to which the provisions of paragraphs 38 or 39 do not apply, it shall calculate those ceilings and limits individually in accordance with the sectoral rules of the regulated entity.

41. When the relevant sector solvency requirements are added together, no further adjustments shall be made other than those set out in paragraphs 26 and 27 or that resulting from adjustments to the sectoral ceilings and limits pursuant to paragraph 37.

42. The calculation of the supplementary capital adequacy requirements of regulated entities in a financial conglomerate shall be based on the consolidated financial statements.

43. Additional capital adequacy ratio requirements result from the difference between:

1) the capital of the financial conglomerate, calculated on the basis of its consolidated financial situation, taking into account the provisions of this Section; and

2) the sum of the solvency requirements applicable to the different financial sectors represented in the group. For each of these subsectors, the solvency requirements shall be calculated in accordance with the provisions of the sectoral rules.

44. In the case of non-regulated financial sector entities, which are not taken into account in the calculation of the sectoral solvency requirements referred to above, a notional solvency requirement shall be calculated.

45. The result of the difference in paragraph 43 shall not be negative.

Section 2
Specification of technical calculation according to the deduction and aggregation method

46. Where the own funds of a regulated entity are subject to a prudential filter under the relevant sectoral rules, one of the following treatments shall apply:

1) the filtered amount, which is the net amount to be taken into account when calculating the own funds of participating interests, shall be added to the carrying amount of the participating interests taking into account the proportionate share that is held directly or indirectly by the parent undertaking or by the entity that holds a participating interest in another entity within the group;

2) the filtered amount referred to in paragraph 1) shall be deducted from the carrying amount of the holdings, considering the proportional share held, if the filtered amount reduces the regulatory capital.

47. For financial conglomerates that are predominantly active in the banking or investment subsector, the significant investment in a financial sector entity within the meaning of paragraph 52 of Regulation 109/2018, which belongs to the insurance subsector, and which is not a shareholding, shall be deducted in full from the own funds items of the entity holding the instrument in accordance with the sectoral rules applicable to that entity.

48. Intra-group investments in any capital instruments that are eligible as own funds under sectoral rules, taking into account relevant sectoral limits, shall be deducted or excluded from the calculation of own funds.

49. The calculation of the additional capital adequacy ratio requirements under the deduction and aggregation method shall be carried out on the basis of the applicable accounting framework of each group entity in accordance with the following formula:

$$scar = \sum_{i=1}^{Gfin} (OF_i) - \left(\sum_{i=1}^{Gfin} (REQ_i) + \sum_{j=1}^{G} (BV_j) \right)$$

scar ≥ 1

where:

OF_i – the entity's own funds *i;*

scar - additional capital adequacy requirements;

REQ_i - the solvency requirement for each entity i;

G – the financial sector to which the group belongs;

G_{fin} - financial group;

BV_j – the carrying amount of interests in other entities j within the group.

50. Own funds (OFi) exclude intra-group capital instruments that are eligible as own funds according to sectoral rules.

51. Additional capital adequacy ratio (scar) requirements are calculated as the difference between:

1) the sum of the own funds (OFi) of each regulated and unregulated entity (i) in the financial sector that belongs to the financial conglomerate (eligible elements according to the relevant sectoral rules); and

2) the sum of solvency requirements (REQi) for each regulated and unregulated entity (i) in the financial sector belonging to the group (G) (solvency requirements shall be calculated in accordance with the relevant sectoral rules), and the carrying amount (BVj) of the holdings in other entities (j) within the group.

52. For non-regulated financial sector entities, a notional solvency requirement shall be calculated in accordance with paragraphs 28 - 30. The own funds and solvency requirements shall be taken into account in a proportional share, which is directly or indirectly owned by the parent undertaking or by the entity holding a stake in another entity within the group.

53. The result of the difference in paragraph 51 shall not be negative.

Section 3
Specifying the circumstances for combining the accounting consolidation method and the deduction and aggregation method

54. The coordinator shall, after consulting with the competent authorities, allow the combination of capital adequacy calculation methods where:

1) it is not reasonably possible to apply to all entities in a financial conglomerate either the accounting consolidation method or the deduction and aggregation method, in particular, because the accounting consolidation method cannot be used for one or more entities because they are outside the scope of consolidation or because a regulated entity is established in a third country and it is not possible to obtain sufficient information to apply one of the methods to that entity;

2) the entities that would apply one of the methods collectively have a negligible interest in the objectives of the supervision of regulated entities belonging to a financial conglomerate.

55. Regulated entities within the scope of paragraph 54 shall consistently apply the combination of the accounting consolidation method and the deduction and aggregation method on an ongoing basis.

56. Regulated entities which are part of a financial conglomerate, and which are not covered by paragraph 54 shall apply either the accounting consolidation method or the deduction and aggregation method.

Chapter IV. SIGNIFICANT INTRA-GROUP TRANSACTIONS

57. The coordinator shall, after consulting the other relevant competent authorities, determine the categories of transactions and risks that regulated entities belonging to a particular financial conglomerate report in accordance with Article 8 of Law 250/2017, by taking into account the specific structure of the financial conglomerate and the risk management framework applied.

58. Significant intra-group transactions may include the following transactions within a financial conglomerate:

1) inter-company investments and balances, including real estate, bonds, debt securities, equity, loans, hybrid and subordinated instruments, asset-backed securities, centralized asset or cash management or cost-sharing arrangements, pension arrangements, the provision of management, back office or other services, dividends, interest and other claims;

2) guarantees, commitments, letters of credit and other off-balance-sheet transactions;

3) derivative transactions;

4) the acquisition, sale or lease of assets and liabilities;

5) intra-group commissions related to distribution contracts;

6) transactions for the purpose of transferring risk exposures between entities in the financial conglomerate, including transactions with special purpose entities or ancillary services undertakings;

7) insurance, reinsurance or retrocession operations;

8) transactions that consist of several linked transactions where assets or liabilities are transferred to entities outside the financial conglomerate, but risk exposure is ultimately restored, within the financial conglomerate.

59. In order to be able to establish intra-group transactions and risk concentrations which, because of their importance, must be reported in accordance with Article 8 of Law 250/2017, the coordinator, after consultation with the other relevant competent authorities and the conglomerate, shall determine the appropriate thresholds based on the regulatory capital and the provisions laid down in this Chapter.

60. The coordinator and the other relevant authorities, regarding regulated entities and mixed financial holding companies, when identifying the types of significant intra-group transactions, when defining the appropriate thresholds, reporting and control periods of significant intra-group transactions, shall in particular take into account:

1) the specific structure of the financial conglomerate, the complexity of intra-group transactions, the specific geographical location of the counterparty and whether or not the counterparty is a regulated entity;

2) potential contamination effects within the financial conglomerate;

3) possible cases of circumvention of sectoral rules;

4) possible conflicts of interest;

5) the solvency and liquidity position of the counterparty;

6) transactions between entities belonging to different sectors of a financial conglomerate, if not already reported at sector level;

7) transactions within a financial sector that have not already been reported in accordance with the provisions of the sectoral rules.

61. The coordinator and the other relevant competent authorities shall agree on the form and content of the report on significant intra-group transactions, including the language, transmission dates and communication channels.

62. The report on significant intra-group transactions shall contain at least the following:

1) the significant transaction dates and values, names and registration numbers or other identification numbers of the relevant group entities and counterparties, including the legal entity identifier (IDNO), where applicable;

2) a brief description of significant intra-group transactions, depending on the types of transactions referred to in paragraph 58;

3) the total volume of all significant intra-group transactions related to a particular financial conglomerate in a given reporting period;

4) information on how conflicts of interest and contamination risks are managed at financial conglomerate level in respect of significant intra-group transactions, including, taking into account the strategy of the financial conglomerate to combine activities in the banking/non-banking, insurance and investment services subsector, or a sector-specific self-assessment of own risks including an analysis of the management of conflicts of interest and contamination risks related to significant intra-group transactions.

63. Transactions that are carried out as part of a single economic transaction are aggregated for the purpose of calculating the thresholds pursuant to Article 8(3) of Law No 250/2017.

Chapter V. SIGNIFICANT RISK CONCENTRATION

64. For the purposes of this Regulation, a significant risk concentration for regulated entities and mixed financial holding companies arises from exposures to counterparties which are not part of the financial conglomerate, whether those risk exposures:

1) are direct or indirect;

2) are balance or off-balance sheet items;

3) refer to regulated and unregulated entities, the same financial subsectors in a financial conglomerate or different financial subsectors;

4) consist of any combination or interaction of the exposures referred to in paragraphs 1) to 3).

65. For the purposes of this Regulation, counterparty risk or credit risk shall include, in particular, risks related to interconnected counterparties in groups, which are not part of the financial conglomerate, including an accumulation of exposures to those counterparties.

66. With regard to regulated entities and mixed financial holding companies, when identifying types of significant risk concentrations, defining the appropriate thresholds, reporting and control periods of significant risk concentrations, the coordinator and the other relevant competent authorities shall take into account in particular:

1) the solvency and liquidity position at the level of the financial conglomerate and of the different entities within the financial conglomerate;

2) the size, complexity and specific structure of the financial conglomerate, including the existence of special purpose entities, ancillary services undertakings, third country entities;

3) the specific risk management structure of the financial conglomerate and the characteristics of the governance system;

4) the diversification of the financial conglomerate's exposures and its investment portfolio;

5) the diversification of financial activities of the financial conglomerate in terms of geographical areas and lines of activity;

6) the relationship, correlation and interaction between risk factors in the various entities within the financial conglomerate;

7) the potential contamination effects within the financial conglomerate;

8) the possible cases of circumvention of sectoral rules;

9) the potential conflicts of interest;

10) the level or volume of risk;

11) the possible accumulation and interaction of exposures of entities belonging to different financial sectors within the financial conglomerate, if not already reported at sectoral level;

12) the exposures in a financial sector of the financial conglomerate which are not reported in accordance with the provisions of the sectoral rules.

67. The coordinator and the other relevant competent authorities shall agree on the form and content of the report on significant intra-group risk concentrations, including language, transmission data and communication channels.

68. The report on significant intra-group risk concentrations shall contain at least the following:

1) a description of significant risk concentrations, depending on the types of risks referred to in paragraph 64;

2) the breakdown of the significant risk concentration by counterparties or groups of interconnected counterparties, by geographical areas, economic sectors, currencies, identifying the names, registration numbers or other identification numbers of the relevant group companies within the financial conglomerate and their counterparties, including the legal entity identifier (IDNO), if applicable;

3) the total value of each material risk concentration at the end of a specific reporting period assessed in accordance with the applicable sector-specific rules;

4) where appropriate, the amount of significant risk concentration, taking into account risk reduction techniques and risk weighting factors;

5) information on how conflicts of interest and risks of contamination in the financial conglomerate are managed in relation to significant risk concentrations, and, taking into account the strategy of the financial conglomerate to combine activities in the banking/non-banking, insurance and investment services subsector, or a sector-specific self-assessment of sector-specific risks including an analysis of the management of conflicts of interest and the risks of contamination related to significant risk concentrations.

Chapter VI. SUPERVISORY MEASURES

69. Regulated entities/mixed financial holding companies must carry out intra-group transactions related to the financial conglomerate on the basis of the principle of full competition or notify intra-group transactions which are not carried out on the basis of this principle.

70. Competent authorities may require regulated entities or mixed financial holding companies:

1) to approve intra-group transactions related to the financial conglomerate, in accordance with internal procedures involving its management body;

2) to report on significant risk concentration and significant intra-group transactions more frequently than required by Article 8 of Law 250/2017, and to carry out additional reports in this regard;

3) to strengthen the risk management processes and internal control mechanisms of the financial conglomerate;

4) to present or improve plans to restore compliance with supervisory requirements and set a deadline for their implementation.

71. Competent authorities shall define thresholds for the identification and control of significant risk concentrations and significant intra-group transactions within the financial conglomerate.