



Brussels, 28.7.2015
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COMMISSION DELEGATED REGULATION (EU) .../...

of 28.7.2015

**supplementing Directive 2002/87/EC of the European Parliament and of the Council
with regard to regulatory technical standards specifying the definitions and
coordinating the supplementary supervision of risk concentration and intra-group
transactions**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

In accordance with Article 21a (1a) of Directive 2002/87/EC and the procedure set out in Article 56 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010, the ESAs shall, through the Joint Committee, develop draft regulatory technical standards to establish a more precise formulation of the definitions set out in Article 2 and to coordinate the provisions adopted pursuant to Articles 7 and 8 and Annex II of Directive 2002/87/EC.

In accordance with Articles 10 to 15 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010, the Commission shall decide within three months of receipt of the draft regulatory technical standards whether to endorse the draft technical standards submitted. The Commission may also endorse the draft technical standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with the third subparagraph of Article 10 (1) of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010, the EBA, EIOPA and ESMA have carried out a public consultation on the draft regulatory technical standards submitted to the Commission in accordance with Article 21a (1a) of Directive 2002/87/EC. A consultation paper was published on the ESAs public websites on 24 July 2014, and the consultation closed on 24 October 2014. Moreover, the ESAs also invited the opinion of the European Supervisory Authorities' respective Stakeholder Groups in accordance with Article 37 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010 respectively. Together with the draft technical standards, the ESAs have submitted an explanation how the outcome of these consultations have been taken into account in the development of the final draft technical standards submitted to the Commission.

Together with the draft technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010, the ESAs have submitted an analysis of the costs and benefits related to the draft technical standards submitted to the Commission.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 1 defines the subject matter of the delegated act.

Article 2 sets out a more precise definition of risk concentration as referred to in Article 2 (19) and Article 7 of Directive 2002/87/EC. It clarifies which risk concentration shall be considered as significant, what coordinators and other relevant competent authorities shall take into account when defining thresholds, periods for reporting and overseeing significant risk concentration and what coordinators and other relevant competent authorities shall require regulated entities or mixed financial holding companies to report on.

With respect to the same aspects of supplementary supervision, Article 3 provides a set of rules for significant intra-group transactions as referred to in Article 2 (18) and Article 8 of Directive 2002/87/EC.

In order to further ensure consistent application of Articles 2, 7 and 8 and Annex II of Directive 2002/87/EC, Article 4 provides a list of supervisory measures which competent authorities shall take into account with respect to the supplementary supervision of financial conglomerates.

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2002/87/EC of the European Parliament and of the Council of 16 December 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 Council¹, and in particular Article 21a(1a) thereof,

Whereas:

- (1) Regulatory technical standards should be laid down to establish a more precise formulation of the definitions set out in Article 2 of Directive 2002/87/EC and to ensure proper coordination of the provisions on supplementary supervision adopted pursuant to Articles 7 and 8 and Annex II of that Directive.
- (2) It is important to provide further details as regards the elements to be taken into account for the purposes of reporting significant intra-group transactions and significant risk concentrations.
- (3) Articles 7 and 8 of Directive 2002/87/EC require Member States to request certain reporting obligations on regulated entities or mixed financial holding companies. Such reporting should take place in a coordinated manner so as to assist coordinators and other relevant competent authorities in identifying relevant issues as well as to facilitate the more efficient exchange of information. In order to achieve greater consistency in the reports on significant risk concentrations and intra-group transactions, regulated entities and mixed financial holding companies should report at least certain standardised minimum information to the coordinators.
- (4) Articles 7 and 8 of Directive 2002/87/EC also empower coordinators to monitor significant risk concentrations and significant intra-group transactions and to identify the types of risks and transactions, which regulated entities in a financial conglomerate are required to report. Coordinators are also empowered to define thresholds. In order to coordinate these provisions, a methodology should be laid down to assist coordinators and other relevant competent authorities in exercising their functions.

¹ OJ L 35, 11.2.2003, p.1

- (5) Measures in place for the supplementary supervision of risk concentration and intra-group transactions vary across the Union. While acknowledging existing Union and national legal frameworks, a number of minimum supervisory measures with respect to the supplementary supervision of risk concentration and intra-group transactions should be laid down. By taking into account those minimum measures, competent authorities will ensure a level playing field and facilitate coordinated supervisory practices across the Union.
- (6) The requirements set out in respect of regulated entities or mixed financial holding companies build on existing sectoral requirements on risk concentration and intra-group transactions and should not be regarded as duplicating those requirements.
- (7) This Regulation is based on the draft regulatory technical standards submitted by the ESAs (European Banking Authority, European Insurance and Occupational Pensions Authority, European Securities and Markets Authority) to the Commission.
- (8) The ESAs have conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the their respective Stakeholder Groups in accordance with Article 37 of Regulations (EU) No 1093/2010², No 1094/2010³ and No 1095/2010 of the European Parliament and of the Council⁴ respectively,

HAS ADOPTED THIS REGULATION

Article 1

Subject matter

This Regulation lays down rules regarding:

- (a) the establishment of a more precise formulation of the definitions of "intra-group transactions" and "risk concentration" set out in points (18) and (19) of Article 2 of Directive 2002/87/EC by laying down criteria for assessing when they are of a significant character
- (b) the coordination of the provisions adopted pursuant to Articles 7 and 8 and Annex II of Directive 2002/87/EC with respect to:
 - (i) the information to be provided by regulated entities or mixed financial holding companies to the coordinator and other relevant competent authorities for the purpose of supervisory overview of risk concentration and intra-group transaction;

² Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

³ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

⁴ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

- (ii) the methodology to be applied by the coordinator and relevant competent authorities for the purposes of identifying types of significant risk concentration and intra-group transactions;
- (iii) the supervisory measures to be applied by competent authorities as referred to in Articles 7(3) and 8(3) of Directive 2002/87/EC.

Article 2

Significant intra-group transactions

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

- (a) investments and intercompany balances including real estate, bonds, equity, loans, hybrid and subordinated instruments, collateralised debt, arrangements to centralise the management of assets or cash or to share costs, pension arrangements, provision of management, back office or other services, dividends, interest payments and other receivables;
- (b) guarantees, commitments, letters of credit and other off-balance sheet transactions;
- (c) derivatives transactions;
- (d) purchase, sale or lease of assets and liabilities;
- (e) intra-group fees related to distribution contracts;
- (f) transactions to shift risk exposures between entities within the financial conglomerate, including transactions with special purpose vehicles or ancillary entities;
- (g) insurance, reinsurance and retrocession operations;
- (h) transactions that consist of several connected transactions where assets or liabilities are transferred to entities outside of the financial conglomerate, but ultimately risk exposure is brought back within the financial conglomerate.

2. With respect to regulated entities and mixed financial holding companies, when identifying types of significant intra-group transactions, defining appropriate thresholds, periods for reporting and overviewing significant intra-group transactions, the coordinator and the other relevant competent authorities shall, in particular, take into account:

- (a) the specific structure of the financial conglomerate, the complexity of the intra-group transactions, the specific geographical location of the counterparty and whether or not the counterparty is a regulated entity;
- (b) possible contagion effects within the financial conglomerate;
- (c) possible circumventions of sectoral rules
- (d) possible conflicts of interests
- (e) the solvency and liquidity position of the counterparty;

- (f) transactions among entities belonging to different sectors of a financial conglomerate, if not already reported at sectoral level;
- (g) transactions within a financial sector, which are not already reported in accordance to the provisions of the sectoral rules.

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

4. The coordinator and the other relevant competent authorities shall at least require regulated entities or mixed financial holding companies to report on the following :

- (a) the dates and amounts of the significant transactions, names and company register numbers or other identification numbers of the relevant group entities and counterparties, including legal entity identifier (LEI), where applicable;
- (b) a brief description of the significant intra-group transactions according to the types of transactions set out in paragraph 1;
- (c) the total volume of all significant intra-group transactions of a specific financial conglomerate within a given reporting period;
- (d) information on how conflicts of interests and risks of contagion at the level of the financial conglomerate regarding significant intra-group transactions are managed, taking into consideration the financial conglomerate's strategy to combine activities in the banking, insurance and investment services sectors, or a sectoral own risks self-assessment including a consideration on the management of conflicts of interests and risks of contagion regarding significant intra-group transactions.

5. Transactions that are executed as part of a single economic operation shall be aggregated for the purpose of calculating the thresholds pursuant to Article 8(2) of Directive 2002/87/EC.

Article 3

Significant risk concentration

1. Significant risk concentration in the case of regulated entities and mixed financial holding companies shall be deemed to arise from risk exposures towards counterparties which are not part of the financial conglomerate, where those risk exposures:

- (a) are direct or indirect;
- (b) are on-balance and off-balance sheet items;
- (c) concern regulated and unregulated entities, the same or different financial sectors in a financial conglomerate;
- (d) consist of any combination or interaction of the exposures set out in points (a), (b) or (c).

2. Counterparty risk or credit risk shall be deemed to include, in particular, risks related to interconnected counterparties in groups, which do not form part of the financial conglomerate, including an accumulation of exposures towards those counterparties.

3. With respect to regulated entities and mixed financial holding companies, when identifying types of significant risk concentration, defining appropriate thresholds, periods for reporting and overviewing significant risk concentration, the coordinator and the other relevant competent authorities shall, in particular, take into account:

- (a) the solvency and liquidity position at the level of the financial conglomerate and of the individual entities within the financial conglomerate;
- (b) the size, complexity and specific structure of the financial conglomerate including the existence of special purpose vehicles, ancillary entities, third countries entities;
- (c) the specific risk management structure of the financial conglomerate and the features of the system of governance;
- (d) the diversification of the financial conglomerate's exposures and of its investment portfolio;
- (e) the diversification of the financial conglomerate's financial activities with respect to geographical areas and lines of business;
- (f) the relationship, correlation and interaction between risk factors across the entities in the financial conglomerate;
- (g) possible contagion effects within the financial conglomerate;
- (h) possible circumventions of sectoral rules
- (i) possible conflicts of interest
- (j) the level or volume of risks;
- (k) possible accumulation and interaction of exposures incurred by entities belonging to different financial sectors of the financial conglomerate, if not already reported at a sectoral level;
- (l) exposures within a financial sector of the financial conglomerate, which are not reported under the provisions of the sectoral rules.

4. The coordinator and the other relevant competent authorities shall agree on the form and content of the significant risk concentration report, including language, remittance dates and channels of communication.

5. The coordinator and the other relevant competent authorities shall at least require regulated entities or mixed financial holding companies to report the following:

- (a) a description of the significant risk concentration according to the types of risks set out in paragraph 1;

- (b) the break-down of the significant risk concentration by counterparties and groups of interconnected counterparties, geographical areas, economic sectors, currencies, identifying the names, company register numbers or other identification numbers of the relevant group companies of the financial conglomerate and their respective counterparties, including LEI, where applicable;
- (c) the total amount of each significant risk concentration at the end of a specific reporting period valued according to the applicable sectoral rules;
- (d) if applicable, the amount of significant risk concentration taking into account risk mitigation techniques and risk weighting factors;
- (e) information on how conflicts of interests and risks of contagion at the level of the financial conglomerate regarding significant risk concentration are managed, taking into consideration the financial conglomerate's strategy to combine activities in the banking, insurance and investment services sectors, or a sectoral own risks self-assessment including a consideration on the management of conflicts of interests and risks of contagion regarding significant risk concentration.

Article 4

Supervisory measures

Without prejudice to any other supervisory powers conferred on them, competent authorities shall, in particular,

1) require regulated entities or mixed financial holding companies to:

- (a) perform intra-group transactions of the financial conglomerate at arm's length or notify intra-group transactions which are not performed at arm's length;
- (b) approve intra-group transactions of the financial conglomerate through specified internal procedures with the involvement of its management body as referred to in Article 3(1) of Directive 2013/36/EU of the European Parliament and of the Council⁵, or of its administrative, management or supervisory body as referred to in Article 40 of Directive 2009/138/EC of the European Parliament and of the Council⁶;
- (c) report more frequently than required under Article 7 (2) and Article 8(2) of Directive 2002/87/EC on significant risk concentration and significant intra-group transactions;
- (d) establish additional reporting on significant risk concentration and significant intra-group transactions of the financial conglomerate;
- (e) strengthen the risk management processes and internal control mechanisms of the financial conglomerate;

⁵ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

⁶ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

- (f) present or improve plans to restore compliance with supervisory requirements and to set a deadline for implementation thereof.
- 2) shall define appropriate thresholds in order to identify and overview significant risk concentration and significant intra-group transactions;

Article 5

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 28.7.2015

For the Commission
The President
Jean-Claude JUNCKER