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Commission Delegated Regulation (EU) 2015/2303 of 28 July 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)

COMMISSION DELEGATED REGULATION (EU) 2015/2303

of 28 July 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)

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 Council[(1)], 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

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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.

(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 1093/2010[(2)], No 1094/2010[(3)] and No 1095/2010[(4)] of the European Parliament and of the Council 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;

(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;

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(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;

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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