

EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (FINANCIAL CONGLOMERATES) (EU EXIT) INSTRUMENT 2019

Powers exercised

- A. The Prudential Regulatory Authority (the “PRA”), being the appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (the “Regulations”), having carried out the consultations required by regulation 5 of the Regulations and with the approval of the Treasury, makes this instrument in exercise of the powers conferred by regulations 3 and 4 of the Regulations.

Pre-conditions to making

- B. The PRA and the FCA are the appropriate regulators for the FiCOD EU Regulations.
- C. The PRA proposes to exercise the power in regulation 3 of the Regulations to modify the FiCOD EU Regulations and considers that (a) Condition A is satisfied and (b) the modifications to the FiCOD EU Regulations can most appropriately be made by using the procedure set out in regulation 4 of the Regulations.
- D. The PRA has consulted the FCA on a division of responsibility and on the modifications contained in Annexes A to B to this instrument in accordance with regulations 3 and 5 of the Regulations.
- E. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation

- F. In this instrument –
- (a) “the Act” means the European Union (Withdrawal) Act 2018;
 - (b) “the FiCOD EU Regulations” means the EU Regulations specified in Part 4 of the Schedule to the Regulations under the heading “Financial Conglomerates Directive”;
 - (c) “Condition A” means the condition defined in regulation 4(2) of the Regulations;
 - (d) “exit day” has the meaning given in the Act;
 - (e) “the FCA” means the Financial Conduct Authority;
 - (f) “the PRA” means the Prudential Regulation Authority;
 - (g) “the Regulations” means the Financial Regulators’ Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018.

Division

- G. Each FiCOD EU Regulation, as it has effect in domestic law by virtue of section 3 of the Act, is divided into two identical versions of the same, headed “Part 1 (FCA)” and “Part 2 (PRA)” respectively.
- H. Immediately before Article 1 in Part 1 (FCA) in those regulations is inserted:

“Article A1

This Part of the Regulation applies to persons regulated solely by the FCA.”

- I. Immediately before Article 1 in Part 2 (PRA) is inserted:

Thursday 28 February: This document is near-final. The final version will be made and published close to exit day. We expect that the made instrument will be materially similar to this version. For more information, see: <https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>.

“Article A1

This Part of the Regulation applies to PRA-authorized persons (within the meaning of section 2B(5) of the Financial Services and Markets Act 2000).”

Modifications to Part 2 (PRA)

- J. The PRA makes the modifications in the Annex listed in column (2) to the corresponding FiCOD EU Regulation (or part thereof) listed in column (1) below.

(1)	(2)
Part 2 (PRA) of Commission Delegated Regulation (EU) 342/2014	A
Part 2 (PRA) of Commission Delegated Regulation (EU) 2015/2303	B

Commencement

- K. This instrument comes into force on exit day.

Citation

- L. This instrument may be cited as the Technical Standards (Financial Conglomerates) (EU Exit) Instrument 2019.

By order of the Prudential Regulation Committee

[DATE] MARCH 2019

Annex A

Calculation Methods for Capital Adequacy

1 MODIFICATIONS TO PART 2 (PRA) OF REGULATION (EU) 342/2014

- 1.1 Part 2 (PRA) of Commission Delegated Regulation (EU) No 342/2014 of 21 January 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 with regard to regulatory technical standards for the application of the calculation methods of capital adequacy requirements for financial conglomerates, as it has effect in domestic law by virtue of section 3 of the Act and this Instrument, is modified as follows:

...

Article 1

Subject matter

This Regulation specifies the technical principles and technical calculation methods listed in Annex I to Directive 2002/87/EC Annex 2 of the Financial Conglomerates Part of the PRA Rulebook and Annex 1R, Chapter 3 of the FCA General Prudential sourcebook for the purposes of the alternatives to deduction referred to Article 49(1) of Regulation (EU) No 575/2013 and for the purposes of calculating own funds and supplementary capital adequacy requirement as provided for in Article 6(2) of Directive 2002/87/EC Capital Adequacy Rule 3 of the Financial Conglomerates Part of the PRA Rulebook and rules 3.1.25R to 3.1.31R of the FCA General Prudential sourcebook.

Article 2

Definitions

~~For the purposes of In~~ this Regulation, ~~the following definitions shall apply:~~

- (1) ~~‘insurance-led financial conglomerate’ means a financial conglomerate the most important financial sector of which is insurance, in accordance with Article 3(2) of Directive 2002/87/EC~~ has the meaning defined in Rule 1.4 (Application and Definitions) of the Financial Conglomerates Part of the PRA Rulebook and the FCA Handbook Glossary of definitions;
- (2) ~~‘banking-led or investment led financial and investment services conglomerate’ means a financial conglomerate the most important financial sector of which is either the banking sector or the investment services sector, in accordance with Article 3(2) of Directive 2002/87/EC~~ has the meaning in Annex 2 (Table 3) of the Financial Conglomerates Part of the PRA Rulebook and Annex 1R (Table 6) of Chapter 3 of the FCA General Prudential sourcebook.

- (3) ‘Directive 2013/36/EU UK law’ means the law of the United Kingdom (or any part of it) which, immediately before exit day, implemented Directive 2013/36/EU as that law has effect on exit day;
- (4) ‘FSMA’ means the Financial Services and Markets Act 2000;
- (5) ‘PRA’ means the Prudential Regulation Authority;
- (6) a reference to a provision of the PRA Rulebook is to rules made by the PRA under FSMA as amended by rule-making instruments made before exit day under FSMA or EU Exit Instruments made at any time under the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018;
- (7) a reference to an FCA sourcebook or manual is to rules and guidance made by the FCA under FSMA as amended by rule-making instruments made before exit day under FSMA or EU Exit Instruments made at any time under the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018;
- (8) a reference to the Solvency 2 Regulations 2015 is to the Solvency 2 Regulations 2015, SI 2015/575 as amended by regulations made under section 8 of the European Union (Withdrawal) Act 2018.

...

Article 4

Transferability and availability of own funds

...

- 2. The entity referred to in ~~the fifth subparagraph of Article 6(2) of Directive 2002/87/EC~~ Rule 12.1 of the Regulatory Reporting Part of the PRA Rulebook and rules 16.12.32R and 16.12.33R of the FCA Supervision manual shall, when submitting the results of the calculation and the relevant data for the calculation referred to in that ~~subparagraph~~ Rule to the coordinator, confirm and provide evidence to the coordinator that paragraph 1 is complied with.

...

Article 5

Sector specific own funds

...

2. ...

- (b) basic own-fund items of ~~undertakings subject to the requirements of Directive 2009/138/EC~~ insurance undertakings or reinsurance undertakings within the meaning of section 417 of FSMA where those items are classified in Tier 1 or in Tier 2 in accordance with ~~Article 94(1) and (2) of that Directive~~ Rules 3.1 and 3.2 of the Own Funds Part of the PRA Rulebook.

...

Article 6

Deficit of own funds at the financial conglomerate level

...

2. The own funds referred to in paragraph 1 are the following:

- (a) Common Equity Tier 1 capital as defined in Article 50 of Regulation (EU) No 575/2013;
- (b) basic own-fund items where those items ~~are classified~~ may be included in Tier 1 own funds in accordance with ~~Article 94(1) of Directive 2009/138/EC~~ Rule 3.1 of the Own Funds Part of the PRA Rulebook and the inclusion of those items is not limited by ~~the delegated acts adopted in accordance with Article 99 of that Directive~~ Article 82 of Regulation (EU) 2015/35;
- (c) ...
- (d) basic own-fund items where those items ~~are classified~~ may be included in Tier 1 own funds in accordance with ~~Article 94(1) of Directive 2009/138/EC~~ Rule 3.1 of the Own Funds Part of the PRA Rulebook and the inclusion of those items is limited by ~~the delegated acts adopted in accordance with Article 99 of that Directive~~ Article 82 of Regulation (EU) 2015/35;
- (e) ...
- (f) basic own-fund items where those items may be included in Tier 2 in accordance with ~~Article 94(2) of Directive 2009/138/EC~~ Rule 3.2 of the Own Funds Part of the PRA Rulebook.

...

Article 8

Consolidation

In relation to insurance-led financial insurance conglomerates, method 1 for calculating the group solvency of insurance and reinsurance undertakings, as laid down in ~~Articles 230, 231 and 232 of Directive 2009/138/EC~~ Chapter 11 of the Group Supervision Part of the PRA Rulebook, shall be considered as equivalent to method 1 for calculating the supplementary capital adequacy requirements of the regulated entities in a financial conglomerate, as laid down in ~~Annex I to Directive 2002/87/EC~~ Annex 2 (Table 1) of the Financial Conglomerates Part of the PRA Rulebook and Annex 1R (Table 1) of Chapter 3 of the FCA General Prudential sourcebook, provided that the scope of group supervision under ~~Title III of Directive 2009/138/EC~~ the Group Supervision Part of the PRA Rulebook and the Solvency 2 Regulations 2015 (Part 3) is not materially different from the scope of supplementary supervision under ~~Chapter II of Directive 2002/87/EC~~ UK legislation implementing Chapter II of Directive 2002/87/EC.

Article 9

Solvency requirement

1. Where the rules for the insurance sector are to be applied, the Solvency Capital Requirement referred to in ~~Articles 100 and 218 of Directive 2009/138/EC~~ Chapters 2 and 3 of the Solvency Capital Requirement – General Provisions Part and Chapter 4 of the Group Supervision Part of the PRA Rulebook including any capital add-on applied in accordance with ~~Article 37 of that Directive~~, following from ~~Article 216(4), Article 231(7), Article 232, Article 233(6), Article 238(2) and (3) of that Directive~~ Regulation 20 of the Solvency 2 Regulations 2015 or under sections 55L or 55M of FSMA shall be considered to be the solvency requirements; for the purpose of the calculation of the supplementary capital adequacy requirements.
2. Where the rules for the banking or investment services sector are to be applied,
 - (a) own funds requirements as laid down in Chapter 1 of Title I of Part Three of Regulation (EU) No 575/2013, and
 - (b) requirements pursuant to that Regulation or to Directive 2013/36/EU UK law to hold own funds in excess of those requirements, including
 - (i) a requirement arising from the internal capital adequacy assessment process in ~~Article 73 of that Directive~~ the Internal Capital Adequacy Assessment Part of the PRA Rulebook and section 2.2 of the FCA Prudential sourcebook for Investment Firms,
 - (ii) any requirement imposed by a competent authority pursuant to ~~Article 104(1)(a) of that Directive~~ Regulation 34 of the Capital Requirements Regulations 2013 or under sections 55L or 55M of FSMA,
 - (iii) the combined buffer requirement as defined in ~~Article 128(6) of that Directive~~ Regulation 2 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014, and

- (iv) measures adopted pursuant to Articles 458 or 459 of Regulation (EU) No 575/2013

shall be considered to be the solvency requirements for the purpose of the calculation of the supplementary capital adequacy requirements.

...

Article 10

The financial conglomerate's own funds and solvency requirements

1. ...
2. The own funds of asset management companies shall be calculated in accordance with the UK legislation implementing Article 2(1)(l) of Directive 2009/65/EC of the European Parliament and of the Council. The solvency requirements of asset management companies shall be the requirements set out in the UK legislation implementing Article 7(1)(a) of that Directive.
3. The own funds of alternative investment fund managers shall be calculated in accordance with the UK legislation implementing Article 4(1)(ad) of Directive 2011/61/EU of the European Parliament and of the Council. The solvency requirements of alternative investment fund managers shall be the requirements set out in the UK legislation implementing Article 9 of that Directive.

...

Article 14

Specification of technical calculation under method 1 pursuant to ~~Directive 2002/87/EC~~ Annex 2 (Table 1) of the Financial Conglomerates Part of the PRA Rulebook and Annex 1R (Table 1) of Chapter 3 of the FCA General Prudential sourcebook

1. The own funds of a financial conglomerate shall be calculated on the basis of the consolidated accounts according to the relevant accounting framework applied to the scope of supplementary supervision under the laws of the United Kingdom that implemented Directive 2002/87/EC and shall take paragraph 5 into account where applicable.
2. With regard to ~~banking-led or investment-led financial~~ banking and investment services conglomerates the following treatments shall be applied to unconsolidated investments when calculating the own funds of the financial conglomerate:

...
5. Where ~~an entity within the scope of Directive 2009/138/EC~~ an insurance undertaking or reinsurance undertaking within the meaning of section 417 FSMA forms part of a financial conglomerate, the calculation of the supplementary capital adequacy requirements at the level of the financial conglomerate shall be based on the valuation of assets and liabilities calculated in accordance with ~~Section 1 and 2 of Chapter VI of~~

~~Title I of Directive 2009/138/EC~~ the Valuation and Technical Provisions Parts of PRA Rulebook.

...

9. For the purpose of calculating thresholds or limits, regulated entities in a financial conglomerate which fall within the scope of group supervision according to ~~Title III of Directive 2009/138/EC~~ the Group Supervision Part of the PRA Rulebook and Part 3 of the Solvency 2 Regulations 2015 shall be considered together.

...

Article 15

Specification of technical calculation under method 2 pursuant to Directive 2002/87/EC Annex 2 (Table 2) of the Financial Conglomerates Part of the PRA Rulebook and Annex 1R (Table 2) of Chapter 3 of the FCA General Prudential sourcebook

1. Where the own funds of a regulated entity are subject to a prudential filter pursuant to the relevant sectoral rules, one of the following treatments shall apply:
 - (a) the filtered amount, being the net amount that shall be taken into account in the calculation of own funds of participations, shall be added to the book value of participations in accordance with ~~subparagraph 2 of Article 6(4) of Directive 2002/87/EC~~ Annex 2 of the Financial Conglomerates Part of the PRA Rulebook and Annex 1R of Chapter 3 of the FCA General Prudential sourcebook, if the filtered amount increases regulatory capital;
 - (b) the filtered amount referred to in point (a) shall be deducted from the book value of participations in accordance with ~~subparagraph 2 of Article 6(4) of Directive 2002/87/EC~~ Annex 2 of the Financial Conglomerates Part of the PRA Rulebook and Annex 1R of Chapter 3 of the FCA General Prudential sourcebook, if the filtered amount decreases regulatory capital.
2. For banking and investment services conglomerates, significant investment in a financial sector entity within the meaning of Article 43 of Regulation (EU) No 575/2013, which belongs to the insurance sector and which is not a participation shall be fully deducted from the own funds items of the entity holding the instrument, in accordance with sectoral rules applicable to that entity.

...

Article 16

Specification of circumstances for the use of Method 3 pursuant to Directive 2002/87/EC a combination of methods 1 and 2

1. Competent authorities may only allow the application of ~~method 3 as referred to in Annex I to Directive 2002/87/EC~~ a combination of method 1 and method 2 as referred to in the Financial Conglomerates Part of the PRA Rulebook and method 3 as referred to in section 3.1 of the FCA General Prudential sourcebook in either of the following circumstances:

- (a) it is not reasonably feasible to apply either method 1 as referred to in ~~Annex I to Directive 2002/87/EC Annex 2 (Table 1) of the Financial Conglomerates Part of the PRA Rulebook and Annex 1R (Table 1) of Chapter 3 of the FCA General Prudential sourcebook~~ to all entities or method 2 as referred to in ~~Annex I to Directive 2002/87/EC Annex 2 (Table 2) of the Financial Conglomerates Part of the PRA Rulebook and Annex 1R (Table 2) of Chapter 3 of the FCA General Prudential sourcebook~~ to all entities within a financial conglomerate, in particular because method 1 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;

...

3. The application of ~~method 3 allowed by a competent authority~~ a combination of method 1 and method 2 in relation to a financial conglomerate shall be consistent over time.

...

Article 17

Entry into force

...

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

...

ANNEX

Calculation methodology for Method 2 pursuant to Directive 2002/87/EC Annex 2 (Table 2) of the Financial Conglomerates Part of the PRA Rulebook and Annex 1R (Table 2) of Chapter 3 of the FCA General Prudential sourcebook

Deduction and aggregation method

...

In the case of non-regulated financial sector entities, a notional solvency requirement shall be calculated in accordance with Article 12. Own funds and solvency requirements shall be taken into account for their proportional share (x) as provided for in the UK legislation implementing Article 6(4) of Directive 2002/87/EC. ~~and in accordance with Annex I to that Directive~~

...

Annex B

Risk Concentration and Intra-Group Transactions

1 MODIFICATIONS TO PART B (PRA) OF REGULATION 2015/2303

- 1.1 Part 2 (PRA) of 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, as it has effect in domestic law by virtue of section 3 of the Act and this Instrument, is modified as follows:-

...

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~~ the Glossary to the PRA Rulebook and in the FCA Handbook Glossary of definitions by laying down criteria for assessing when they are of a significant character
- (b) the coordination of the ~~provisions adopted pursuant to UK legislation implementing~~ 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~~ the other regulator 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~~ the other regulator 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~~ any quantitative limits or other supervisory measures which would achieve the objectives of supplementary supervision, with regard to any risk concentration at the level of a financial conglomerate;
 - (iv) any quantitative limits and qualitative requirements or other supervisory measures that would achieve the objectives of supplementary supervision, with regard to intra-group transactions of regulated entities within a financial conglomerate.

Article 2

Significant intra-group transactions

...

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~~ the other regulator shall, in particular, take into account:

...

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

...

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~~ determining whether an intra-group transaction is significant.

Article 3

Significant risk concentration

...

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~~ the other regulator shall, in particular, take into account:

...

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

...

Article 4

Supervisory measures

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

1. require, where appropriate, regulated entities or mixed financial holding companies to:
 - (a) ...
 - (b) approve intra-group transactions of the financial conglomerate through specified internal procedures with the involvement of its management body as ~~referred to defined in Article 3(1) of Directive 2013/36/EU of the European Parliament and of the Council (5), 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 Council (6)~~ the Glossary of the PRA Rulebook and the FCA Handbook Glossary of definitions;
 - (c) report more frequently than required under ~~Article 7(2) and Article 8(2) of Directive 2002/87/EC~~ Regulatory Reporting Rule 12 of the of the PRA Rulebook and rule 16.12.33 of the FCA Supervision manual on significant risk concentration and significant intra-group transactions;

...

Article 5

...

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

...