

Template for comments

ECB Guide on financial conglomerate reporting of significant risk concentrations and intragroup transactions

Institution/Company

The following conglomerate groups, members of the Pan-European conglomerate Club:

- Belfius Bank
- BNP Paribas
- BPCE Group
- Caixa Bank
- Crédit Agricole Group
- Crédit Mutuel Group
- Danske Bank
- DZ Bank
- KBC Group
- La Banque Postale
- OP Financial Group
- Banco Santander
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General comments

The Pan-European Conglomerate Club

(5 October 2023)

Subject: Accompanying letter to the answer to the Consultation on Draft Guide on financial conglomerate reporting of significant risk concentrations and intragroup transactions.

Executive Summary

Following the entry into force of the “RC-IGT reporting ITS” (Regulation (EU) 2022/2454) mid-December 2022, the ECB has decided to publish additional general policy guidance on the reporting.

As this draft Guide has been published in a context where the first reporting date is approaching and where all implementation projects have already started and are about to finish, the PCC is questioning some fundamental aspects of the expectations set out in the Guide, especially regarding the legal aspects ~~effects~~ of the Guide, the new level of reporting thresholds which appears to be very low, the basis used for assessing the thresholds, the treatment of derivatives and the mitigation of the Single Economic Operation notion.

Methodological clarifications are expected on some relevant aspects and important issues are raised.

General Comments

The fundamental principles of the ITS on RC-IGT have been deeply reviewed through this draft Guide especially regarding the IGT threshold calculation. As the implementation scenarios have been built on the basis of the requirements set out in the ITS, the former regulations (FICOD, RTS on IGT-RC) and the exchanges with respective JSTs, the timeline given to financial Conglomerates to comply with the new expectations appears too short.

The financial Conglomerates are questioning this sudden change of methodology on key concepts of the report and the legal aspects ~~effects~~ of the Guide as many principles are not issued from the existing regulations.

The new level of thresholds proposed which are expressed on absolute values appears to be very low compared to the current situation (ratio of 15 to one) and do not embed any proportionality principles.

The appreciation of the significant transactions through the prism of the notion of Single Economic Operation is also completely reviewed.

In addition, the basis used for the calculation of these thresholds seems to be inconsistent with the supervisory objectives pursued at the level of the Financial Conglomerates.

A more balanced vision should prevail to take into consideration proportionality principles with a report outlining the most significant operations useful from a supervision standpoint.

1. Legal aspects effects of the Guide

As the date of first application is approaching and the implementation scenarios have been established on the basis of the ITS requirements and the existing regulations, the PCC members thank for the consultation but are feeling that the ECB, according to settled case-law, FICOD being a directive, ~~cannot of itself impose direct obligations on a natural or legal person⁽⁴⁾~~. The ECB should therefore apply national law transposing the directive, **regardless of the size of the institution leading the financial conglomerate being supervised under Directive 2002/87/EC (“FICOD”)**^[2]. It should also apply the ITS requirements, adopted under article 7(2) FICOD, as well as its Annex II. PCC members further note that the Guide expressly states that it has no legal effects:

- That it *“does not establish new regulatory requirements”*
- That *«the specifications and principles included in the Guide should not be construed as being legally binding.»*,
- That *“financial conglomerates should not assume that the general expectations set out in this Guide are directly applicable to them”*.

However, as the Guide intends to set out *“general policies”* reflecting *“the minimum expectations that the ECB will normally have when setting those reporting requirements”*, PCC members note that the minimum requirements are set forth by binding legislation, meaning both FICOD and the ITS. Under these binding texts, the ECB holds the power to adopt individual supervisory measures on a case-by-case basis, considering the specific group and risk management structure of the financial conglomerate and the existing sector-specific requirements on intragroup transactions and risk concentrations.

Furthermore, we note that under §26 of the Preamble of all three European Supervisory Authorities founding regulations, ~~they do not hold the power to issue guidelines or recommendations in areas covered by an ITS. Reasoning by analogy, and to avoid confusion and possible overlaps, we ask the ECB to question the relevance of the Guide at hand, when the purpose of RC-IGT reporting ITS precisely is to guide institutions in the implementation of FICOD. In views of these assertions,~~ FICOD and the ITS shall prevail over the Guide. PCC members will implement the obligations as provided by the ITS and carefully consider case-by-case supervisory measures formulated by the ECB based on their own specificities.

2. Threshold for intragroup transactions reporting

a. Threshold calculation is deeply reviewed, and SEO vision is mitigated

The SEO (Single Economic Operation) vision seems to be completely mitigated as the Guide expects a global calculation by nature of transactions following the structure of the IGT templates, which contradicts Article 2(5) of Regulation 2015/2303 according to which: *“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.”*

Since the entry into force of the Regulation 2015/2303 (RTS on IGT-RC), groups are explicitly required to aggregate the transactions which are part of a Single Economic Operation and to explain how they interpret the notion of SEO through a procedure. Therefore, these new expectations, if they should be maintained in the final version of the Guide, would call PCC members to go beyond the existing regulation which foresees a threshold calculation based on the SEOs. Aside from being questionable from a legal perspective, the requirement at hand is also not operationally feasible in views of the very short time for implementation until the first reporting date.

As the Guide calls into question some provisions of the level 1 text and the cost/benefit standpoint, it also, and more fundamentally, raises questions from an equilibrium between regulatory and supervisory roles perspective: under FICOD and the ITS, the role of the ECB is to exert its supervisory judgement on a case-by-case basis.

In addition, the financial Conglomerates are questioning the legal basis of the new threshold of €300m which does not appear in any former regulation (neither the FICOD nor the ITS and the RTS on IGT-RC or the current reporting instructions). Indeed, Article 8(2) of the FICOD states that: “[...] an intra-group transaction shall be presumed to be significant if its amount exceeds at least 5 % of the total amount of capital adequacy requirements at the level of a financial conglomerate.” And Article 2(5) of the RTS on IGT-RC on Significant intra-group transactions refers to the same FICOD article.

Moreover, this absolute threshold appears to be very low compared to the current situation and does not take into consideration any proportionality principles. The PCC asks the ECB to keep the current methodology and to maintain a threshold expressed in a percentage of the total amount of capital adequacy requirements as it is set by Article 8(2) FICOD and by the ITS on RC-IGT, in order to respect relevant applicable EU law as well as the principle of proportionality.

Further clarifications are also expected on the two different levels of threshold calculation (a first level based on an aggregation of transactions by nature and a second one which gathered all the residual transactions below the threshold). At the end of the process, requesting such additional thresholds would imply to report almost all the transactions instead of the significant transactions, questioning again the proportionality of the expectation.

Related paragraph in the draft ECB Guide:

“Intragroup transactions between regulated entities belonging to different sectors, and between a regulated entity of the group and any natural or legal person linked to the undertakings within that group by close links, should also be reported whenever the sum of equity-type transactions, debt and asset transfers, derivatives, off-balance sheet items and contingent liabilities intragroup transactions between the entities equals or exceeds 5% of the total amount of capital adequacy requirements of the financial conglomerate or €300 million”.

b. Derivatives: use of nominal amount for threshold calculation instead of carrying amount

The basis for calculating the threshold for derivatives is modified in the Guide as the carrying amount has been replaced by the nominal value of the derivatives (i.e., the notional amounts).

According to the Off Balance-Sheet definition given by Annex V of FINREP based on Annex I of CRR, the notional amount of derivatives is not considered and listed as off balance-sheet item. It is not reported on the financial statements but only provided in the Annexes. The notional amount of derivatives financial instruments represents only an indication of the institution’s volume of activity on markets in financial instruments and does not reflect market risks attached to these instruments.

In this regard, PCC members strongly feel that the nominal value is not, under FICOD and the ITS, a relevant regulatory metric to evaluate necessity to report these transactions.

This change of methodology contradicts the provisions of the relevant binding legislation and would also have a significant impact in terms of implementation, raising proportionality issues.

Annex of Final ITS Instructions on IGT and RC reporting templates - Section “FC.02 – IGT – Derivatives”

“In this template, all significant intra-group transactions related to derivatives between entities that fall within the scope of financial conglomerate supervision as set out in Article 8(2) of Directive 2002/87/EC shall be reported. Significant intra-group transactions related to derivatives shall be reported where the carrying amount of the derivative exceeds the threshold”.

Annex of Final ITS Instructions on IGT and RC reporting templates - Section “FC.00 – Summary template”

Items linked to derivatives on FC.00 should be populated by taking into consideration the attribute FC0180 which refers to the carrying amount: ‘FC0010’ shall be equal to the sum of the amounts declared under ‘FC0180’ in sheet ‘FC.02 Derivatives’, ‘FC0020’ shall be equal to the sum of the amounts declared under ‘FC0180’ in sheet ‘FC.02 Derivatives’ etc.

In this sense, the basis for calculating the threshold for derivatives should be kept as described within ITS based on the current binding methodology i.e., the carrying amount.

3. Flows of intragroup transactions

The ITS require to report transactions:

- *in-force at the start of the reporting period*
- *incepted during the reporting period and outstanding at the reporting date*
- *incepted and expired/matured during the reporting period*

These requirements are also re-affirmed in the draft Guide.

According to the last discussions regarding the period to be reported for the first submission, the data collection should be started from July 1st, 2023, to December 31st, 2023.

At group level of main Conglomerates, the financial statements based on consolidation process allows to identify the stock exposures basis at macro level and at quarterly accounting closing date.

To meet the requirements of the new Financial Conglomerates reporting, the process will be enriched to get the contracts level and the attributes at reporting date.

However, to get the required details by flows within the reporting period, it will be necessary to request the information from multiple back-office applications within overall **local entities**, which generates a more important volume of transactions through a very complex and long process. Current IT systems are not able to produce such data. In this sense, a stock vision should prevail.

4. Gradual implementation of new expectations

In view of all the deep changes proposed through this Guide, which partially contradicts the relevant EU legal framework, as well as its very late publication, the PCC group asks the ECB to review its contents to align them with the ITS which has already been operationally deployed within institutions. PCC members will, of course, make themselves available to discuss with the ECB any case-by-case expectations tailored to their specificities.

If the new expectations are not reviewed, the PCC group would not be able to implement them for the 1st application date. The first report will be on a best-effort mode based on interpretations of the current ITS on IGT-RC and existing regulations.

Indeed, this draft Guide has been published only a few months before the 1st application date, in a context where the implementation of large-scale and costly projects has already been initiated for a long time, based on the new ITS on RC-IGT, former regulations and informal exchanges with respective JSTs on envisaged implementation scenarios.

We are grateful for the interest you will have on this letter and the answers you will provide.

Yours sincerely

The following conglomerate groups, members of the Pan-european conglomerate Club:

- Belfius Bank
- BNP Paribas
- BPCE Group
- Caixa Bank
- Crédit Agricole Group
- Crédit Mutuel Group
- Danske Bank
- DZ Bank
- KBC Group
- La Banque Postale
- OP Bank
- Banco Santander
- Société Générale

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[1] [Court of Justice of the EU \(« CJEU »\), judgment of 26 February 1986, Marshall, 152/84, EU:C:1986:84, paragraph 48; see also: CJEU, judgment of 19 January 2010, Küçükdeveci, C 555/07, EU:C:2010:21, paragraph 46.](#)

[2] [Directive 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](#)

Template for comments

ECB Guide on financial conglomerate reporting of significant risk concentrations and intragroup transactions

Please enter all your feedback in this list.

When entering feedback, please make sure that:

- each comment deals with a single issue only;
- you indicate the relevant article/chapter/paragraph, where appropriate;
- you indicate whether your comment is a proposed amendment, clarification or deletion.

Deadline: [last date for providing comment]

ID	Chapter	Paragraph	Page	Type of comment	Detailed comment	Concise statement as to why your comment should be taken on board	Name of commenter	Personal data
1	General expectations			Clarification	The ECB Draft Guide remains silent as to several important practical questions with regard to the future FiCo-Reporting: - frequency of the FiCo-Reporting, - the due date for the first reporting as of Dec. 31. 2023 - the expected starting date of IGT-Monitoring in 2023 - the format of delivery requested (XBRL, Excel?) - platform for delivery of reporting (Casper? On gate?)	When it comes to the expected restitution format of the templates, sending them in a .csv format would be more suitable in regards of the volume of transactions to be reported instead of an Excel format.	PCC Group	Publish
2	Types of transaction and risk to be reported	1	5,6	Clarification	Risk concentration Type (i) is to be reported in template FC06 . Types (ii) to (iv) are to be reported in FC07. Nothing is mentioned on template FC08 (Exposure by asset class and rating). Does is mean that this template is not to be reported? But that's not mentioned explicitly. Also no thresholds are given for this type. Not clear to us how to interpret these reporting instructions.	Reporting instructions should be clear and precise.	PCC Group	Publish
3	Requirements regarding risk concentrations	2	8	Deletion	The concept of groups of connected clients needs to be implemented for Insurance RC as well, otherwise monitoring of 25% FICO own funds cannot be monitored on a consistent basis, if the entities of the banking group report Exposures on the basis of groups of connected clients whereas the entities of the insurance sector report exposures for single name debtors. In order not to impose new regulatory requirements for insurance groups, FC06 should report exclusively exposures to individual clients.	The Guide states on page 2 that it does not establish new regulatory requirements. The introduction of the concept of groups of connected clients imposes a new regulatory requirement for insurance groups and is in our opinion not in line with Art. 1 No. 2 of Del. Regulation 2022/2454 (FiCo ITS) which provides for consistency of the reported FiCo data and the reported sectoral data and should therefore be deleted.	PCC Group	Publish
5	Thresholds for reporting significant risk concentrations	1	7	Clarification	Does the threshold of the lower of € 300 Mio and 10% of FiCo Own Funds apply to the Templates FC.07 and FC.08 as well, i.e. only significant Risk concentrations have to be reported? This would be in line with Art. 3 Par. 5 of Del. Regulation (EU) 2015/2303 which specifies minimum requirements for breakdowns of significant risk concentrations.	Reporting instructions should be clear and precise.	PCC Group	Publish
6	Thresholds for reporting intragroup transactions	1	9	Clarification	"Whenever this amount is equal or above the following thresholds: [...] (ii) For derivatives, where the sum of the nominal values of the derivatives equals or exceeds the lower of 5% of the total amount of capital adequacy requirements of the financial conglomerate or €300 million. For derivatives, ITS UE 2022/2454 defines 'Significant intra-group transactions related to derivatives shall be reported where the carrying amount of the derivative exceeds the threshold.'	We are not in line with ECB view, which define that the amount of derivatives is based on nominal value and we do not understand such change. The ECB Guide appears as not in line with the regulatory requirements. In addition, the summary sheet FC.00 also considers the carrying amount for derivatives. Using the notional amount to determine the relevance would be inconsistent with the summary sheet.	PCC Group	Publish

7	Thresholds for reporting intragroup transactions	1	9	Clarification	<p>Extract from the Guide "Whenever this amount is equal or above the following thresholds: (i) For equity-type transactions, debt and asset transfers, where the <u>sum of the exposures</u> equals or exceeds the lower of 5% of the total amount of capital adequacy requirements of the financial conglomerate or €300 million. [...] (v) Profit and Loss (P&L), where the absolute value of the transaction constitutes at least 5% of the financial conglomerate's income on the same reference date."</p> <p>We are not in line with the ECB view to calculate a cumulative amount of transactions. It is not in line with the purpose of the conglomerate reporting which is to identify significant transactions. Indeed, article (8).2 of FICOD said " The Member States shall require regulated entities or mixed financial holding companies to report [...] all significant intra-group transactions of regulated entities within a financial conglomerate [...] an intra-group transaction shall be presumed to be significant if its amount exceeds at least 5 % of the total amount of capital adequacy requirements at the level of a financial conglomerate." Accordingly, the cumulative amount required by the Guide does not seem in line with the FICOD. With the cumulative amount, the report requires to declare all intra-group transactions, even those which reached €1, and not only the significant one. This notion of cumulative amount should be restricted to the Single Economic Operation.</p> <p>Instead of a threshold expressed on an absolute value, the current methodology should be kept with a threshold expressed on % of the capital adequacy requirement of the Conglomerate in order to take into consideration the proportionality.</p> <p>Besides, the threshold P&L is based on one transaction (absolute value) which appears as more appropriate. Hence, we do not understand the difference for the other categories.</p>	We are not in line with the ECB view to calculate a cumulative amount of transactions and to calculate the threshold on the basis of absolute values.	PCC Group	Publish
8	Thresholds for reporting intragroup transactions	2	9	Clarification	<p>Intragroup transactions (IGT): The ITS requires FiCo to report IGT that were (i) in force at the start of the reporting period; (ii) initiated during the reporting period and still in force at the reporting date; or (iii) initiated and expired/matured during the reporting period.</p> <p>Since the new FiCo reporting includes completely new information, data structure and format and as a new feature historization of transactions (No. (iii)) even for a much lower Threshold than expected (€ 300 Mio vs. 5% of FiCo Own Funds requirements) we advocate a tolerance for the first reporting remittance (best effort basis)</p>	Since the reporting format is completely new and the lower threshold of € 300 Mio was introduced for the first time with the Draft ECB Guide on August 21, 2023 we advocate a tolerance for the first reporting as of December 31, 2023- if expectations are not reviewed - and additional time for implementation after the publication of the official ECB Guideline.	PCC Group	Publish
9	Explanations of the general expectations set out in this Guide	2	3	Clarification	"the ECB considers that requesting financial conglomerates to report intrasectoral financial activities (i.e. between regulated entities of the same sector) would not ordinarily be necessary to meet the objectives of the Financial Conglomerates Directive"	Regarding the FC00, as ECB considers that these intrasectoral financial transactions do not need to be reported, does it mean that columns FC0020, FC0040 and FC0090 do not need to be reported ?	PCC Group	Publish
10	Thresholds for reporting intragroup transactions	2	9	Clarification	<p>"Intragroup transactions between regulated entities belonging to different sectors, and between a regulated entity of the group and any natural or legal person linked to the undertakings within that group by close links, should also be reported whenever the sum of equity-type transactions, debt and asset transfers, derivatives, off-balance sheet items and contingent liabilities intragroup transactions between the entities equals or exceeds 5% of the total amount of capital adequacy requirements of the financial conglomerate or €300 million. p.2 "This Guide does not establish new regulatory requirements (...)."</p> <p>This paragraph requires to report all intra-group transactions if the cumulative amount of transactions in equity + derivatives + off balance sheet is above the indicated threshold. Accordingly, it appears as an additional threshold.</p> <p>It seems to be not in line with the FICOD principles which requires to declare only significant transactions when their individual amount is above the threshold. Article (8).2 of FICOD said " The Member States shall require regulated entities or mixed financial holding companies to report [...] all significant intra-group transactions of regulated entities within a financial conglomerate [...] an intra-group transaction shall be presumed to be significant if its amount exceeds at least 5 % of the total amount of capital adequacy requirements at the level of a financial conglomerate."</p>	It seems to be not in line with the FICOD principles which requires to declare only significant transactions when their individual amount is above the threshold.	PCC Group	Publish
11	Requirements regarding risk concentrations	3	8	Clarification	In Section 2.4 there is a Typing error. The last paragraph states FC0205 instead of FC0250. The typing error should be corrected.	The typing error should be corrected.	PCC Group	Publish

