Financial Supervisory Authority

Regulation no. 6/2018

for amending and supplementing the ASF Regulation no. 3/2014 on some aspects related to the application of Government Emergency Ordinance no. 99/2006 regarding credit institutions and capital adequacy and Regulation (EU) no. 575/2013 of the European Parliament and of the Council held on June 26th 2013 on prudential requirements for credit institutions and investment firms and amending the Regulation (EU) No. 648/2012

In force since June 13th 2018

Published in the Official Journal, Part I no. 486 of June 13th 2018.

Under the provisions of Art. 1 para. (2), art. 2 para. (1) point a) and d), art. 6 para. (2) and art. 14 of Government Emergency Ordinance no. 93/2012 on the establishment, organization and functioning of the Financial Supervisory Authority, approved with amendments and completions by Law no. 113/2013, including subsequent amendments and additions,

considering the provisions of art. 1, 3 and 4 of Law no. 12/2017 on the macro-prudential oversight of the national financial system,

having regard to the provisions of the Regulation of the National Committee for Macro prudential Oversight no. 2/2017 on the methodology and procedure used to establish capital buffers and the scope of these instruments,

according to the deliberations of the Board of the Financial Supervisory Authority during the meeting held on May 16th 2018,

The Financial Supervisory Authority shall issue this Regulation.

Art. I. - The Regulation of the Financial Supervisory Authority no. 3/2014 on some aspects related to the application of Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy and Regulation (EU) no. 575/2013 of the European Parliament and of the Council held on June 26th 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012, published in the Official Journal of Romania, Part I, no. 170 of March 10th 2014, including subsequent amendments and additions, shall be amended and completed as follows:

1. In Article 3, points 32, 34, 36 and 37 shall be amended and shall have the following content:

" 32. The capital buffer for global systemically important institutions (G-SII) - the own funds that a Financial Investment Services Company (FISC) is obliged to maintain them in accordance with art. 18 of the Regulation of the Regulation of the National Committee for Macro prudential Oversight no. 2/2017 on the methodology and procedure used to establish capital buffers and the scope of these instruments;

. . . .

34. the capital buffer for systemic risk - the own funds that FISC is obliged to maintain them in accordance with art. 103;

. . . .

36. the rate of the countercyclical capital buffer - the percentage share that FISC must apply to calculate the countercyclical capital buffer specific to the afferent FISC;

37. investment firm authorized at national level - a FISC for which rate of the countercyclical capital buffer is imposed by a decision issued by the Financial Supervisory Authority, hereinafter referred to as ASF, upon recommendation of the National Committee for Macro prudential Oversight, hereinafter referred to as NCMO;".

2. In Article 3, point 38 is repealed.

3. In Article 3, after point 39, a new point is inserted, point 40, with the following content:

" 40. Significant third State - Third State that was identified as significant following periodic assessments performed by NCMO."

4. After Article 40, a new article is inserted, Article 40^1, with the following content:

" Art. 40^1. - (1) FISC should establish risk management policies that define their approach on the encumbrance of assets as well as procedures and controls to ensure that the risks associated with guarantees management and encumbrance of assets are properly identified, monitored and managed.

(2) The policies provided for in paragraph (1) must take into account the business model of each FISC, the specificity of the financing markets and the macroeconomic situation.

(3) The policies provided for in paragraph (1) shall be approved by the governing body."

5. In Article 41, three new paragraphs are inserted, paragraphs (2)-(4), with the following content:

" (2) In order to have the necessary capacity to identify all significant types of liquidity risk concentrations, FISC must have a good understanding of the financing structure and asset structure and be aware of all the main factors that influence them over time. The identification of liquidity risk concentrations should also take into account off-balance sheet commitments.

(3) Depending on the model of activity, FISC must take into account the vulnerabilities stemming from the financing and asset structures.

(4) FISC operating in several countries and in multiple currencies must have access to various sources of funding in each currency in which the FISC holds significant positions."

6. After Article 40, a new article is inserted, Article 41^1, with the following content:

" Art. 41[1]. - To determine the level of liquidity risk concentration, FISC should use quantitative indicators to complement the qualitative assessments of liquidity risk concentrations."

7. In Article 43, two new paragraphs are inserted, paragraphs 2 and 3, with the following content:

" (2) When preparing the financing contingency plans, FISC must also take into account the liquidity risk concentrations.

(3) FISC should include strategies in contingency plans that take into account the contingent encumbrance arising from relevant crisis situations such as a deterioration in the FISC rating, depreciation of pledged assets, and increases in margin requirements."

8. Article 64 shall be amended and shall have the following content:

" Art. 64. - (1) This Chapter and Title III lay down rules on the own funds which the FISC is required to hold in order to constitute capital buffers.

(2) This Chapter and Title III apply to FISC and to Romanian branches of the investment firms from third countries.

(3) This Chapter and Title III shall not apply to FISC that are not authorized to provide the investment services referred to in Art. 5 para. (1) point c) and f) of Law no. 297/2004, including subsequent amendments and additions."

9. Article 65 shall be amended and shall have the following content:

" Art. 65. - (1) In applying the provisions of art. 126[1] of Government Emergency Ordinance no. 99/2006, approved with amendments and completions by Law no. 227/2007, including subsequent amendments and additions, the provisions of this Chapter and of Title III, ASF may by decision adopt measures for the application of this Chapter and of Title III and the level of capital buffers.

(2) On the NCMO's recommendation, the ASF may issue resolutions to impose capital buffer rates unless the exposures are located in other countries, and the countercyclical capital buffers established by the competent authorities or their designated authorities apply directly the provisions of art. 72 paras. (3) and (4). In the decisions issued, the ASF also specifies the date from which the FISC applies the capital buffer rates.

(3) If ASF decides to apply the recommendations issued by NCMO, ASF shall inform NCMO within 10 working days of the adoption of that decision.

(4) The ASF informs NCMO of the publication in the Official Journal of Romania, Part I, of the decision by which the recommended measures were imposed on FISC.

(5) On the recommendation of NCMO, the ASF may grant derogations from the application of certain reciprocity measures in the field of capital buffers to investment firms that register exposures below a certain threshold.

(6) If ASF decides to proceed in accordance with paragraph (5), it shall inform the NMVOC of the derogation granted and, on its recommendation, shall apply a regular monitoring process, in order to make any necessary adjustments.

(7) If ASF disagrees with any of the elements contained in the recommendation issued by NCMO and therefore does not apply the recommended measure, the ASF informs NCMO and submits to it the substantiation of that decision within 10 working days of its adoption.

(8) ASF periodically analyzes the efficiency and effectiveness of macro-prudential instruments in the category of capital buffers applied to FISC, with a view to formulating any proposals to be subjected to NCMO analysis, related to:

a) calibration, recalibration or deactivation of already implemented macroprudential instruments; and/or

b) activating new macro-prudential instruments to mitigate identified risks and vulnerabilities."

10. In Article 66, paragraphs (1), (2) and (3) shall be amended and shall have the following content:

" Art. 66. - (1) FISC should maintain, as appropriate, at individual and consolidated level, in accordance with the provisions of first part title II of the Regulation (EU) No. 575/2013, in addition to the basic level 1 own funds provided under art. 92 of the same Regulation, a capital conservation buffer equal to 2,5% of the total amount of the risk exposure calculated according to Art. 92 para. (3) of the Regulation (EU) No. 575/2013. The capital conservation buffer shall be constituted by base level 1 own funds items and added to the own funds requirements resulting from the application of the provisions of Art. 92 of Regulation (EU) No. 575/2013, as well as art. 226 paras. (1) - (5) of the Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, approved with amendments and completions by Law no. 227/2007, including subsequent amendments and additions.

(2) Upon NCMO's recommendation, ASF may exempt small and medium-sized FISCs from the requirements set out in paragraph (1), if such an exemption does not threaten the stability of the financial system at national level.

(3) The decision by which the ASF grants the exemption provided in para. (2) includes the NCMO recommendation to this effect, provided in para. (2)."

11. In Article 66, paragraphs 4 and 5 shall be repealed.

12. In Article 67, paragraph (2) shall be amended and shall have the following content:

"(2) The requirement for the maintenance of the specific countercyclical capital buffer referred to in para. (1) shall be added to the own funds requirements resulting from the application of the provisions of Art. 92 of the Regulation (EU) No. 575/2013, as well as art. 226 paras. (1) - (5) of the Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, approved with amendments and completions by Law no. 227/2007, including subsequent amendments and additions. The countercyclical capital buffer must be constituted by base level 1 own funds items held in addition to those used to meet the own funds requirements resulting from the provisions of Art. 92 of the Regulation (EU) No. 575/2013 and art. 226 paras. (1) - (5) of the Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, approved with amendments and completions by Law no. 227/2007, including subsequent amendments and additions."

13. In Article 67, after paragraph (2), a new paragraph is inserted, paragraph (21), with the following content:

" (21) Upon NCMO's recommendation, ASF may exempt small and medium-sized FISCs from the requirements set out in paragraph (1), if such an exemption does not threaten the stability of the financial system at national level."

14. In Article 67, after paragraph (3), a new paragraph is inserted, paragraph (4), with the following content:

" (4) The decision by which the ASF grants the exemption provided in paragraph (21) includes the recommendation to this effect by NCMO, provided in paragraph (21)."

15. In Title III, Chapter I, Sections 2 to 4, comprising Articles 68 to 70, shall be repealed.

16. In Article 71, paragraph (1) shall be amended and shall have the following content:

" Art. 71. - (1) The countercyclical capital buffer rate specific to FICS is equal to the weighted average of the rates of the countercyclical capital buffer applied in the jurisdictions where the relevant exposures of FISC credits are located, in accordance with the provisions of this Regulation and the ASF's decisions on capital buffers."

17. Article 72 shall be amended and shall have the following content:

" Art. 72. - (1) For the purposes of calculating the countercyclical capital buffer rate specific to FICS, including, where applicable, for the purposes of the relevant consolidated capital component, the FISC shall use the rates of the countercyclical capital buffer applicable in the jurisdictions where the relevant credit exposures are located, published on the ASF website, in accordance with the provisions of paragraphs (2) - (4).

(2) The countercyclical capital buffer rate applicable for the relevant credit exposures located in Romania is determined by the ASF decision issued on NCMO's recommendation.

(3) The countercyclical capital buffer rate applicable to the relevant credit exposures located in another member state is:

a) the rate set by the designated authority of that member state, where that rate does not exceed 2,5% of the total amount of risk exposure;

b) the rate set by the designated authority of that member state where this rate exceeds 2,5% of the total risk exposure amount and is imposed by the ASF by a decision issued on NCMO's recommendation;

c) 2.5% of the total exposure amount if the rate determined by the designated authority of that member state exceeds 2,5% of the total risk exposure amount and the ASF has issued a decision imposing a rate of 2,5% of the total risk exposure amount, following the NCMO recommendation, issued on the basis of a decision of the NCMO not to recognize the rate imposed by the designated authority of the member state.

(4) The countercyclical capital buffer rate applicable to relevant credit exposures located in a third state is:

a) where the designated authority of a significant third state has not established and published a countercyclical capital buffer for that State:

(i) the countercyclical capital buffer rate imposed by decision issued by ASF, at NCMO's recommendation;

(ii) 0%, if ASF did not issue a decision to that effect;

b) where the designated authority in a significant third state has established and published a countercyclical capital buffer for that state:

(i) the rate determined by the designated authority of that significant third state, where this rate does not exceed 2,5% of the total risk exposure amount, and the NCMO does not consider it necessary to recommend a level higher than the level determined by that designated authority;

(ii) the countercyclical capital buffer rate imposed by ASF's decision, upon the NCMO's recommendation, if it considers it necessary to recommend a higher rate than the rate established by the designated authority of the significant third state;

(iii) the rate determined by the designated authority of the significant third state, if this rate exceeds 2.5% of the total risk exposure amount and is imposed by ASF's decision, upon the NCMO's recommendation;

(iv) 2.5% of the total risk exposure amount if the rate determined by the designated authority of the significant third state exceeds 2.5% of the total risk exposure amount and the ASF has issued a decision imposing a rate of 2.5% of the total risk exposure amount, following the NCMO's recommendation, issued on the basis of a decision not to recognize the rate imposed by the designated authority of the significant third state."

18. In Article 73, paragraph (3) shall be amended and shall have the following content:

" (3) For the purposes of the calculation provided in Art. 71 para. (1):

a) the countercyclical capital buffer rates imposed by ASF's decision, upon the NCMO's recommendation, shall apply from the date provided for in that decision, if the decision has the effect of increasing the rate;

b) the rates established by the designated authorities of other member states, if these rates do not exceed 2,5% of the total risk exposure amount, shall apply from the date specified by those authorities, if their decision has the effect of increasing the rate;

c) subject to point (a), the countercyclical capital buffer rate for a third state shall apply 12 months after the date on which the competent authority of a third state announces the rate change, regardless of whether that authority requires investment firms established in the third state to apply the change in a shorter term, given that the decision has the effect of increasing the rate. In this respect, a change in the rate for a third state shall be deemed to be notified on the date on which it is published by the competent authority of the third state in accordance with the relevant national regulatory framework;

d) the countercyclical buffer rate shall be applied immediately where the decision has the effect of reducing it."

19. Articles 74 and 75 shall be repealed.

20. Article 76 shall be amended and shall have the following content:

" Art. 76. - Each institution identified by the NCMO as a G-SII type institution should maintain, at a consolidated level, a G-SII buffer at the level imposed by ASF's decision, at NCMO's recommendation. The G-SII buffer must be constituted by basic level 1 own funds and added to the own funds requirements resulting from the provisions of Art. 92 of the Regulation (EU) No. 575/2013, as well as art. 226 paras. (1) - (5) of the Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, approved with amendments and completions by Law no. 227/2007, as amended and supplemented."

21. Articles 77 and 78 shall be repealed.

22. In Article 79, paragraph (1) shall be amended and shall have the following content:

"Art. 79. - (1) FISCs identified by the NCMO as O-SII type institutions maintain, at a consolidated, sub-consolidated or individual level, as the case may be, an O-SII buffer, imposed by ASF's decision, at NCMO's recommendation. The O-SII buffer must be constituted by basic level 1 own funds and shall be added to the own funds requirements resulting from the application of the provisions of Art. 92 of the Regulation (EU) No. 575/2013, as well as art. 226 paras. (1) - (5) of the Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, approved with amendments and completions by Law no. 227/2007, as amended and supplemented."

23. In Article 79, paragraphs 2 to 4 shall be repealed.

24. Articles 80 to 86 shall be repealed.

25. Article 87 shall be amended and shall have the following content:

" Art. 87. - Systemically important institutions do not use basic level 1 own funds maintained to cover the G-SII buffer and the O-SII buffer imposed by ASF's decision according to art. 76 and art. 79 par. (1) on NCMO's recommendation, in order to meet any of the requirements imposed under art. 92 of the Regulation (EU) No. 575/2013, art. 66 and 67 of this Regulation, as well as any other requirements imposed under art. 226 of the Government Emergency Ordinance no. 99/2006, approved with amendments and completions by Law no. 227/2007, as amended and supplemented."

26. Article 88 shall be amended and shall have the following content:

" Art. 88. - If a group, at a consolidated level, is subject to the following types of buffers, it shall be applied the buffer with the highest value of:

a) G-SII and O-SII buffer;

b) G-SII buffer, O-SII buffer and, in accordance with art. 103, the capital buffer for systemic risk."

27. Article 89 shall be amended and shall have the following content:

" Art. 89. - If a FISC, at individual or sub-consolidated level, is subject to an O-SII buffer and to a capital buffer for systemic risk in accordance with Art. 103, the buffer with the highest value of the two shall be applied."

28. Article 90 shall be amended and shall have the following content:

" Art. 90. - Without prejudice to the provisions of art. 88 and 89, if the capital buffer for systemic risk applies to all exposures located in Romania but does not apply to exposures outside the system, the capital buffer for systemic risk is cumulated with the O-SII buffer or the G- SII buffer, which shall be applied in accordance with art. 79, respectively art. 76."

29. Article 93 shall be repealed.

30. Article 94 shall be amended and shall have the following content:

" Art. 94. - FISC must apply the capital buffer for systemic risk to exposures located in Romania, exposures located in third states and exposures located in other member states, in accordance with the ASF's decision, on the NCMO's recommendation."

31. Articles 95 to 102 shall be repealed.

32. In Article 103, paragraph (1) shall be amended and shall have the following content:

" Art. 103. - (1) FISC must maintain, at an individual, consolidated and sub-consolidated level, in addition to the own funds provided under art. 92 para. (3) of the Regulation (EU) No. 575/2013, a capital buffer for systemic risk, imposed by ASF's decision, on the NCMO's recommendation. The capital buffer for systemic risk consists of basic level 1 own funds and is added to the own funds requirements resulting from the provisions of Art. 92 of the Regulation (EU) No. 575/2013, as well as art. 226 paras. (1) - (5) of the Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, approved with amendments and completions by Law no. 227/2007, as amended and supplemented."

33. Article 105 shall be repealed.

34. Article 149 shall be amended and shall have the following content:

" Art. 149. - (1) In 2018, by derogation from the provisions of Art. 66, FISC shall maintain the capital conservation buffer at a level equal to 1,875% of the total risk-weighted exposure amount of FISC, calculated in accordance with Art. 92 para. (3) of the Regulation (EU) No. 575/2013.

(2) Between January 1st 2019 and December 31st 2019, FISC must maintain the capital buffer at the level required by the ASF's decision, on the NCMO's recommendation."

35. Article 150 shall be amended and shall have the following content:

" Art. 150. - (1) In 2018, by derogation from the provisions of Art. 67, FISC shall maintain the countercyclical capital buffer at 0% of the total risk-weighted exposure amount of FISC, calculated in accordance with Art. 92 para. (3) of the Regulation (EU) No. 575/2013.

(2) Between January 1st 2019 and December 31st 2019, FISC must maintain the countercyclical capital buffer at the level imposed by the ASF's decision, on the NCMO's recommendation."

36. In Article 151, paragraphs (3) - (7) shall be repealed.

37. In Article 152, paragraph (1) shall be amended and shall have the following content:

" Art. 152. - (1) The provisions of art. 76 and 87-92 apply as follows:

a) 75% of G-SII buffer, determined in accordance with art. 76, in 2018; and

b) 100% of G-SII buffer, determined in accordance with art. 76, in 2019."

Art. II. - This Regulation shall be published in the Official Journal of Romania, Part I, in the Bulletin and on the website of the Financial Supervisory Authority and shall enter into force on the date of its publication in the Official Journal of Romania.

Chairman of the Financial Supervisory Authority,

Leonardo Badea

Bucharest, May 17th 2018.

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