

## Deloitte Banking Alert

January 2020

### New regulatory requirements for credit institutions in 2021

Regulation no. 11/2020 amending and supplementing Regulation no. 5/2013 on prudential requirements for credit institutions (Regulation no. 11/2020) and Regulation no. 12/2020 on authorization of the credit institutions and the changes in their situation (Regulation no. 12/2020), both issued by the National Bank of Romania (NBR) entered into force on 24 December 2020, being applicable since then.

**Both Regulations aim to align the local banking regulatory legislation with the EU requirements issued by the EU competent authorities in this field.**

### What is the news under Regulation no. 11/2020?

#### Subject matter

**Regulation no. 11/2020 incorporates into Regulation no. 5/2013 multiple EU Guides and Guidelines issued by the European Banking Authority (EBA) and European Central Bank (ECB), including, most importantly:**

- EBA Guidelines on internal governance (EBA/GL/2017/11);
- Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders (EBA/GL/2017/12);
- EBA Guidelines on ICAAP and ILAAP information collected for SREP purposes (EBA/GL/2016/10) ;
- EBA Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) (EBA/GL/2014/13);
- ECB Guide to the internal capital adequacy assessment process (ICAAP);
- ECB Guide to the internal liquidity adequacy assessment process (ILAAP);
- EBA Guidelines on credit institutions' credit risk management practices and accounting for expected credit losses (ECL) (EBA/GL/2017/06).

The updates are mainly focused on four areas: (i) internal governance framework; (ii) Fit & Proper arrangements; (iii) ICAAP/ILAAP and (iv) sound management of risk and stress testing and aim at:

- ✓ Strengthening risk culture;
- ✓ Improving management oversight over business activity and risk management;
- ✓ Improving ICAAP/ILAAP processes;
- ✓ Improving management of significant risks.

### NBR requires credit institutions to implement best EU practices regarding internal governance framework

The transposition of EBA Guidelines on internal governance (EBA/GL/2017/11) and Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders (EBA/GL/2017/12) brings fundamental approach to the internal organization of a credit institution regarding the organisation of the management bodies, the specialized committees and the control and risk management functions, as well as their roles and responsibilities and details, among others, the notions of risk culture, corporate values and code of conduct, as well management of conflicts of interest.

With respect to the suitability (individual and collective as well) of the members of the management board and key function holders, the NBR imposes stricter requirements for credit institutions to consider when assessing whether the members of the management body:

- ✓ Have a good reputation;
- ✓ Have sufficient knowledge, skills and experience to exercise their responsibilities;
- ✓ Are able to exercise their responsibilities with honesty, integrity and independent thinking;
- ✓ Have the ability to allocate sufficient time to perform their duties.

Considering the new requirements, **the management body in its supervisory function must be composed of an adequate number of independent members, but not less than two independent members.**

In addition, along with the requirements of independency, **the new Regulations brings the notion of “independency of mind” - a pattern of behaviour, shown in particular during discussions and decision-making within the management body**, and is required for each member of the management body regardless of whether or not the member is considered as “being independent”. **All members of the management body should engage actively in their duties and should be able to make their own sound, objective and independent decisions and judgments when performing their functions and responsibilities.**

Moreover, the new rules introduce a **Matrix for the assessment of the collective suitability of the members of the management body** that will allow the credit institution to assess the collective skills and knowledge of the management body and identify areas where additional training is needed.

### **Enhanced ICAAP and ILAAP framework**

**The new rules describe in detail the ICAAP and ILAAP processes, with a view on the governance, methodology and the process itself.**

The credit institution's **internal capital adequacy and risk assessment process must be a component of the credit institution's management process and decision-making culture**, and should consist in:

- a) identifying, measuring, mitigating and reporting the risks to which the credit institution is or may be exposed, for the continuous calculation and assessment of internal capital and liquidity needs;
- b) planning and maintaining the sources of internal capital and liquidity necessary to achieve the adequacy of capital and liquidity to the risk profile of the credit institution.

**Credit institutions shall ensure that ICAAP and ILAAP are:**

- (i) fully documented;
- (ii) a component part of credit institutions' management processes; and
- (iii) integrated into general risk management and strategic management practices, including capital and liquidity risk management.

**The Management body must demonstrate an appropriate level of commitment and knowledge of ICAAP and ILAAP and their results.** To this end, the **Management body shall approve the ICAAP and ILAAP frameworks and results and the results of their internal validation. In addition, credit institutions shall report regularly, at least quarterly, the results of ICAAP and ILAAP, including the evolution of significant risks and key indicators, to the Management body.**

### **Expected credit losses management**

**Regulation no. 11/2020 also incorporates the requirements set out in EBA Guidelines on credit institutions' credit risk management practices and accounting for expected credit losses (ECL) (EBA/GL/2017/06). It describes the following areas related to ECL measurement:**

- **Responsibilities of the governing body and senior management;**
- **Adequate ECL methodologies;**
- **Credit risk rating process and exposure grouping;**

- **Adequacy of loss adjustment;**
- **Validation of the ECL model;**
- **Professional judgment based on credit experience;**
- **Common processes, systems, tools and data;**
- **Disclosure.**

**Credit institutions shall consider a wide range of information when applying ECL accounting models that must be relevant for the credit risk assessment and for measuring the level of ECL related to the assessed credit exposure and must include information on past events, current conditions and forecasts of future economic conditions.**

Moreover, in order to ensure timely recognition of credit losses, **credit institutions shall consider forward looking information, including macroeconomic factor.** Thus, credit institutions shall identify cases in which an analysis (supported by a sufficient set of data) shall be conducted in order to ensure the proper application of generally accepted methods of analysis and economic forecast.

**Additionally, the credit institution's senior management shall be responsible for ensuring that there is established an effective internal control system** that leads to the determination of appropriate adjustments for losses, as well as policies and procedures, in accordance with accounting regulations applicable and with guidelines and instructions in the field of supervision, establishing practices for the proper management of credit risk.

The new rules also introduce **provisions specific to credit institutions for the application of IFRS 9, specifically:**

- Assessment of significant increases in credit risk;
- Use of practical simplifications;
- The set of information that a credit institution must take into account when assessing expected credit losses;
- Derogation for low credit risk exposures;
- Relative presumption of a significant increase in credit risk since initial recognition in the case of exposures with overdue payments over 30 days.

## What is the news under Regulation no. 12/2020?

### Subject matter

Regulation no. 12/2020 incorporates into Romanian legislation the Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (JC/GL/2016/01) and is focused on the following matters:

a) the procedure, documentation and conditions regarding the authorization of banks, savings and lending banks in the housing field, mortgage credit banks and credit cooperative organizations, Romanian legal entities generically called credit institutions, as well as Romanian branches of credit institutions from third countries;

- a) the conditions under which changes may be operated in the situation of the entities mentioned under point a) above, in order to ensure prudential supervision;
- b) the procedure and conditions for the prior approval of the merger and division operations involving entities mentioned under point a) above;
- c) the conditions, requirements and documentation regarding the authorization of bridge-credit institutions;
- d) the procedure, documentation and conditions for notifying a proposed acquisition in the situation of implementing the instrument of sale of business under recovery and resolution legislation.

Similar rules were implemented before in several regulations issued by the NBR, however Regulation no. 12/2020, besides bringing together all such rules, it also imposes more precise, detailed and strict rules regarding the matters mentioned above, especially regarding the authorization procedure of a potential acquisition (e.g., high volume of documentation, stricter rules regarding the form of such documentation, content of business plan).

### Next steps:

- **Credit institutions and NBR shall assess and/or re-assess the suitability of the members of the management bodies and key functions holders before 24 December 2021;**
- **Ongoing assessment/re-assessment of suitability of the members of the management bodies and key function holders will be done according to legal framework in force at the moment of their initiation (except for requirements set out by art. 6745-6750 of Regulation no.5/2013);**
- **Credit institutions shall comply with the requirements regarding management body independent members number before 24 December 2021;**
- **Credit institutions shall submit their ICAAP and ILAAP for the reference date 31 December 2020 until 30 April 2021.**

- **Credit institutions shall adapt their policies, mechanisms and processes regarding risk management framework, governance arrangements, internal process of capital and liquidity assessment and stress testing framework until 24 June 2021.**

## How can Deloitte help you?

**Our risk advisory and legal team has extensive experience and can help you implement the new rules detailed in this banking alert, including:**

### **I. Internal governance**

- ✓ Design the Terms of reference for the Management Body (both in supervisory and management functions) and of specialized committees;
- ✓ Assessment of Management Body and Board (BoD) committees against its mandates listed in charters;
- ✓ Enhance efficiency of your internal corporate governance through optimizing interactions among control functions;
- ✓ Review of the internal governance framework, including:
  - a) Organisational chart;
  - b) BoD and Committees Terms of references;
  - c) Policy for conflicts of interest;
  - d) Succession planning.

### **II. Evaluation and Re-evaluation of the BoD members and key-functions holders suitability**

- ✓ Review of the Management body suitability assessment framework and workflow;
- ✓ Design the matrix for Management body for collective suitability assessment;
- ✓ Design the questionnaires and other required documents for management body members for individual suitability assessment;
- ✓ Legal review of the documents required to be submitted with the NBR for the individual suitability assessment;
- ✓ Provide training sessions to members of the management body on their roles and responsibilities.

### **III. ICAAP and ILAAP**

- ✓ Analysis through documentation and meetings/workshops current Bank's approach to ICAAP and ILAAP;
- ✓ Define changes to adjust the process to regulatory requirements and best practices;
- ✓ Design methodological approach to assessment of internal capital and liquidity needs;
- ✓ Define interconnectedness of ICAAP and ILAAP with other risk-management areas;
- ✓ Integration of results in decision-making and planning processes.

#### IV. Credit risk (ECL)

- ✓ Assess the ECL methodology;
- ✓ Validate the ECL model;
- ✓ Define the responsibilities of the management body;
- ✓ Assess and improve disclosure framework;
- ✓ Assess the existing data and tools.

#### V. Prior authorizations and/or approvals from the NBR

- ✓ Buy-side assistance in potential acquisitions of shares in a Romanian credit institutions (e.g., prepare documentation NBR authorization file, assistance in relation with the NBR);
- ✓ Prepare required documentation file for merger and division operations;
- ✓ Assistance with respect to the changes subject to the NBR approval or notification.

For further questions regarding the aspects mentioned in this alert, do not hesitate to contact us.



**Dimitrios Goranitis**

FSI Risk & Regulatory Advisory  
Partner, Deloitte Central Europe  
Tel: +40 751 250 884  
Email: [digoranitis@deloittece.com](mailto:digoranitis@deloittece.com)



**Andrei Burz-Pînzaru**

Partner  
Reff & Associates | Deloitte Legal  
Tel: +40 728 328 928  
Email: [aburzpinzaru@reff-associates.ro](mailto:aburzpinzaru@reff-associates.ro)