Position Paper

Insurance Europe response to ESAs draft RTS on harmonisation of capital requirement calculation methods under FICOD

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Summary

The European (re)insurance industry would like to point out that all references made to Solvency II in the draft Regulatory Technical Standards (RTS) are redundant for insurance-led conglomerates. Solvency II already incorporates many cross sectorial aspects whereby group supervision and reporting requirements extend to other financial sectors and non-financial sectors within the group. Therefore RTS should not repeat or deviate from these rules. We highlight in our response the areas where this is occurring.

Instead, we believe that the focus should be put on a consistent treatment between banks and insurers. It is currently not the case as there is a clear issue of competitive distortion between insurers inside a bank-led conglomerate and other insurers. Therefore the purpose of any Financial Conglomerate Directive (FiCoD) review or any associated RTS should be to ensure consistency and to fill in any gaps that could result from CRD IV and Solvency II at conglomerate level.

Finally we note that the structure is extremely confusing, with several cross-references made to different sectorial legislations. We believe that the relationship between FiCoD and the other sectorial directives should be made clear in any FiCoD review or associated RTS.

Areas where the draft RTS are redundant with Solvency II raise additional problems for insurance-led conglomerates since they add confusion and go beyond Solvency II.

Assessing the transferability of funds at the level of an insurance-led conglomerate

Article 4(1b) states that *"for the purpose of assessing the transferability of funds to entities subject to 2009/138/EC, "in due course" shall mean no later than 9 months".* We would like to point out that this clarification is already expected to be dealt with in the draft Solvency II Level 2 text, Article 323(1c). Therefore, there is no need to repeat this in these regulatory technical standards.

Assessing the eligibility of own funds at the level of an insurance-led conglomerate

We question the rules for cross sector own funds: Article 5.2 of the RTS lays down criteria where Additional Tier 1 (AT1), Restricted Basic Own Funds and Tier 2 (T2) instruments should meet both sets of sectorial rules. According to CRD IV, AT1 instruments include predefined trigger events for loss absorption mechanisms. In

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practice, trigger events would be impossible to be defined according to Solvency II and according to CRD IV requirements for one instrument.

Moreover, we do not agree with the ESAs drafting that Tier 3 own funds under Solvency II cannot be used at the level of financial conglomerates. There is a very detailed system under Solvency II for assessing the eligibility of own funds and determining their inclusion at group level which is already overly prescriptive.

In practice all funds can be made available at group level through the use of intra-group transactions. As such what is considered to be loss absorbent at solo level should also be considered as loss absorbent at group level including own funds which may qualify as "sector specific" under these RTS.

As a consequence, at least own funds which are eligible at group level under Solvency II should be considered as available for the conglomerate, without further constraints.

Elimination of double gearing at insurance-led conglomerate level

Solvency II does not permit double gearing, therefore the insurance group position should suffice for the purpose of Article 3 of the draft RTS.

From our understanding, the main concern arises from elimination of double gearing within a bank-led conglomerate.

We fully support any attempt to eliminate any risk of regulatory arbitrage and ensure a level playing field either through appropriate provisions at FiCoD level or at the level of any associated RTS.

Consolidation rules at the level of insurance-led conglomerate

It should be clear that Solvency II applies for the consolidation of insurance-led conglomerates. Therefore, we do not understand why equivalence in these RTS is restricted to method 1 and does not include method 2 allowed under Solvency II.

Treatment of non-regulated financial entities for insurance-led conglomerates

Article 12(1) introduces the concept of "non-regulated mixed-financial holding company". We believe that the term "non-regulated" is redundant and confusing. Also, we would suggest including a definition of "non-regulated financial entities" or "non-regulated financial sector entities", which should be used in a consistent manner and be consistent with Solvency II as well. Article 12(1) for example currently refers to "non-regulated financial sector entities" while Article 12(2) refers to "non-regulated financial entities" and in the explanatory text for Article 12 reference is made to a "non-regulated entity".