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FBF response to the EBA, EIOPA and ESMA's Joint Consultation Paper on Guidelines on the convergence of supervisory practices relating to the consistency of supervisory coordination arrangements for financial conglomerates

The French Banking Federation (FBF) represents the interests of the banking industry in France. Its membership is composed of all credit institutions authorized as banks and doing business in France, i.e. more than 390 commercial, cooperative and mutual banks. FBF member banks have more than 38,000 permanent branches in France. They employ 370,000 people in France and around the world, and service 48 million customers.

FBF banks appreciate the opportunity to respond to the EBA, EIOPA and ESMA's Joint Consultation Paper on the guidelines on the convergence of supervisory practices relating to the consistency of supervisory coordination arrangements for financial conglomerates.

We fully support the agencies' objectives to ensure greater consistency in the way financial conglomerates are supervised. The ESA's guidelines make indeed for a significant step towards the cross-sectoral and cross-border convergence of supervisory arrangements applicable to financial conglomerates. In a context where banking regulation is already far more demanding both in terms of capital requirements and of capital definition, those are of the paramount importance to ensure a level-playing field is achieved, in particular between banking-led and insurance-led financial conglomerates.

Though we support the general aims of the agencies' work, we have three areas of concerns with the proposed guidelines:

- Firstly, we believe that supervisory arrangements for financial conglomerates should focus on possible specific risks that might be posed by financial conglomerates, where they exist, and should not seek to introduce an additional layer of inappropriate constraints with regard to capital adequacy. It is indeed worth reminding that the Financial Conglomerate directive and the delegated regulation of the European Commission issued in January 2014 already specify how capital adequacy of financial conglomerates must be assessed and calculated. We therefore remain concerned that this business model that has proved to be resilient in the EU during the financial crisis in 2008 /2009 is put at disadvantage if undue constraints are imposed on top of the existing ones;

- Secondly, we believe that reporting requirements applicable to financial conglomerates should lie first and foremost on regulatory reportings already required under both the financial conglomerate directive and sectorial regulations.

Indeed, since banks and insurers have different business models, we firmly believe that Solvency 2 and the CRD 4/CRR regime are the two sectorial Pillars on which the financial conglomerates supervision must be based. Both these prudential frameworks have significant impacts on institutions' business model and are particularly resources consuming;

- Thirdly, it would be advisable clarifying at paragraph 4 that the ESAs' guidelines will apply as part of the Single Supervisory Mechanism (SSM) in the Eurozone. The guidelines should also specify how cooperation will be carried out in practice between the SSM, the supervisory colleges where they exist and the national competent authorities.

Our response to the ESAs consultation consists of two sections:
- General comments, reflecting our key messages;
- Guidelines review, which provides answers to the questions raised by the ESAs in the accompanying documents.

1- General comments:

Assessment of financial conglomerates' capital adequacy policies

1. It is our opinion that the guidelines could be clarified with respect to the assessment of financial conglomerate's capital adequacy policies. Financial conglomerates are indeed already subject to a delegated regulation of the European Commission, supplementing the directive 2002/87/EC, that specifies how capital adequacy of financial conglomerates must be evaluated. Yet, article 35 of the proposed guidelines provides that "… the coordinator should assess the impact of the capital adequacy of each conglomerate's entity (be it a single entity or a subgroup) on the overall capital adequacy at the level of the financial conglomerate".

2. That last sentence of Article 35 should be either clarified or deleted. It introduces indeed unnecessary uncertainties in the capital adequacy assessment of financial conglomerates, suggesting in particular that the supplementary supervision provided under Directive 2002/87/EC and supplemented by the aforementioned delegated act of the European Commission might not be actually suitable to adequately assess their capital adequacy. Furthermore, it will open the door to possible interpretation issues and may finally counter-balance the main objective of those guidelines which is to achieve greater consistency in the supervision of financial conglomerates.

3. This sentence goes actually beyond the requirements of the financial conglomerate directive which states at Article 6 (2) second paragraph that "Member States shall also require regulated entities to have in place adequate capital adequacy policies at the level of the financial conglomerates", taking account of the provisions set out at Article 9 (2b) and Article 9 (3a) . But the financial conglomerate directive does not require a supplementary capital adequacy test on top of the supplementary supervision, as per the last sentence of Article 35 of the proposed guidelines.

4. Likewise, we advise against duplications of tasks between those performed at sectoral and at financial conglomerate levels. Article 34 provides indeed that "…If available, the [sectoral] assessment should include: (a) an evaluation of the quality of each entity's capital, considering potential material restrictions on its transferability; and (b) regulatory constraints that may arise at solo/subconsolidated level".

As it is currently drafted, this article may require a reassessment of capital adequacy at sectoral level when dealing with a financial conglomerate. It is our view that this article should be deleted since it pertains to sectoral regulation and may possibly lead to level-playing field issues: sectoral rules and any supervisory assessment performed at sectoral level should apply in the same way to all banks and insurers, whether they are part of a financial conglomerate or not. Besides, transferability and availability of capital at the financial conglomerate level are already dealt with at Article 4 of the aforementioned delegated act relating to the supplementary supervision.

Reporting requirements should leverage existing reportings to the greatest extent possible

5. Article 25 states that "the coordinator should agree with the other competent authorities on the frequency, formats and templates for the regular exchange of information. Templates should be agreed on between coordinator and the competent authorities, in particular for the gathering of information on risk concentration and intra-group transactions". It is our view that it would be advisable to systematically consult with financial conglomerates on such regular exchanges of information in case additional data need to be provided by financial conglomerates", in respect with the rule that all parties shall be heard. A contradictory process would be advisable in that case.

6. It is also worth noting that information is already provided on risk concentration and intra-group transactions under the financial conglomerate directive. Hence, it is our view that duplication of requirements should be absolutely avoided in this respect and that existing regulatory reportings should be used to the largest extent.

Deduction of capital investments of insurers in banking entities

7. To avoid multiple-gearing of capital across a financial conglomerate, the FICO directive requires elimination of intra-group capital transactions and intra-group creation of capital in the supplementary supervision of a financial conglomerate's capital adequacy (Annex I, Art. 2(i)).

8. However, that provision might have been interpreted differently across jurisdictions when it comes to capital instruments issued by a bank and subscribed by life-insurance policyholders. Hence, when dealing with the capital adequacy of a financial conglomerate, the guidelines should clarify that regulatory capital instruments issued by an institution and subscribed by life-insurance policyholders in an insurance company that is included in the scope of the FICO supervision, do not need to be deducted to the extent that the related risks are unconditionally transferred to policyholders and that they are not subject to any guarantee nor any arrangement that enhance the seniority of the claim. Naturally, in this case, consumer protection rules and duty of advice compliance should be paid attention. Article 37 of the proposed guidelines ("supplementary supervision of risk concentration") could consequently provide that policyholders' investments in capital instruments issued by regulated institutions included in the same FICO supervision may be subject to limits.

Endorsement of the guidelines by the SSM

9. It would be advisable clarifying at paragraph 4 that the ESAs' guidelines will apply as part of the Single Supervisory Mechanism (SSM) in the Eurozone, since paragraph 4 refers to "competent authorities as defined in Article 2(16) of the FICOD" (which defines competent authorities as being national competent authorities).

10. Where the parent undertaking of a banking-led conglomerate is under the supervision of the SSM, the guidelines should clarify how the cooperation will be carried out in practice between the SSM, the joint supervisory team," the supervisory colleges (where they exist) and the national competent authorities.

2- Guidelines review.

Q1 – Do you agree with the suggested scope of the guidelines with respect to the mandate given under Article 11 of the Directive 2002/87/EC

11. The last sentence of Article 35 ("In particular, the coordinator should assess the impact of the capital adequacy of each conglomerate's entity (be it a single entity or a subgroup) on the overall capital adequacy at the level of the financial conglomerate") should be clarified and aligned with the provisions of the FICO directive or, alternatively, it should be deleted since it might raise interpretations issues. Moreover, this sentence goes beyond the mandate provided at Article 11 of the financial conglomerate directive which does not require a supplementary capital adequacy test or assessment on top of the supplementary supervision.

12. Article 34 may possibly lead to level-playing field issues: sectoral rules and any supervisory assessment performed at sectoral level should apply in the same way to all banks and insurers, whether they are part of a financial conglomerate or not. That article, which provides with a reassessment of capital adequacy at sectoral level when dealing with a financial conglomerate ("If available, the [sectoral] assessment should include: (a) an evaluation of the quality of each entity's capital, considering potential material restrictions on its transferability; and (b) regulatory constraints that may arise at solo/subconsolidated level"), should be deleted since, on the one hand, it pertains to sectoral regulation and, on the other hand, transferability and availability of capital at the financial conglomerate level are already dealt with at Article 4 of the aforementioned delegated act relating to the supplementary supervision of financial conglomerate.

13. To harmonise supervisory practices with regard to capital adequacy assessment, the guidelines should clarify that regulatory capital instruments issued by an institution and subscribed by life-insurance policyholders in a life-insurance company that is included in the scope of the FICO supervision, do not need to be deducted to the extent that the related risks are unconditionally transferred to policyholders and that they are not subject to any guarantee nor any arrangement that enhance the seniority of the claim.

14. We suggest clarifying the wording used at article 54 ("emergency planning / emergency plans"). It is indeed unclear whether it actually refers to recovery and resolutions plans, to liquidity contingency planning or to business contingency planning.

15. Finally, as mentioned in the general comments above, we recommend clarifying that the guidelines will also apply as part of the SSM and setting out the applicable arrangements for the practical cooperation between the SSM, the supervisory colleges (where they exist) and the national competent authorities.

Q2 – Should the mapping process identify any other kind of undertakings and participations held by the parent undertaking or any of the subsidiaries of a financial conglomerate, apart from those described in paragraph 16?

16. We do not foresee any issues in this area.

Q3 – Do you consider appropriate the minimum number of meetings described in paragraphs 49 and 50

17. We consider that this is appropriate.

Q4 – Do you agree with the analysis if the impacts of the proposals in this CP. If not, can you provide any evidence or data that would further inform the analysis of the likely costs and benefit impacts of the proposals

18. The ESAs have estimated that "no significant costs for institutions are expected". However, it is our view that existing regulatory requirements should be used to the largest extent, especially those on intra-group transactions and on concentrations.

19. Besides, article 25 provides that "the coordinator should agree with the other competent authorities on the frequency, formats and templates for the regular exchange of information. Templates should be agreed on between coordinator and the competent authorities, in particular for the gathering of information on risk concentration and intra-group transactions". We highly recommend to systematically consult with financial conglomerates on regular exchanges of information in case additional data need to be provided by financial conglomerates.