

EBF response to the IWCFC recommendations to address the consequences of the differences in sectoral rules on the calculation of own funds of financial conglomerates

Detailed remarks

1. Hybrid capital instruments

IWCFC proposes that the principles and requirements for eligibility should be the same for banks and insurance companies, modelled closely along the principles and requirements set out in the CEBS proposal. Differences between the two should not occur unless they reflect specificities of both sectors. Harmonisation should occur at the latest with the implementation of Solvency 2.

It is essential for the definition of the eligible capital to be the same across sectors for at least three reasons:

- Ensure a level playing field;
- Make possible an integrated management of banking and insurance legs of a financial conglomerate;
- Permit transfer of surplus capital between the two legs of a financial conglomerate.

As a result, we strongly support the Commission approach to adopt the three tier structure for the purpose of the Solvency II draft Directive, rather than developing a completely new approach.

The current CEBS draft proposal for a common EU definition of Tier 1 hybrids should be reconsidered, as explained in the attached EBF position paper (see enclosure D0322). We would like to stress that the proposal is not compliant with the Commission's commitment to Better Regulation that seeks to "*promote competitiveness both at EU level and in the Members States*" and it does not show consideration for "*the right balance between the policy agenda and the economic costs of regulation*".

2. Unrealised gains and revaluation reserves

IWCFC presently sees no necessity for changing the current rules. Instead, the IWCFC recommends striving for more consistency in the national transposition of the sectoral rules and the application of the prudential filters.

We agree with the IWCFC conclusion. Generally speaking, a greater consistency in the national transposition of the sectoral rules helps to ensure a level playing field across Member States and between the two sectors. As a result, it would help to identify possible shortcomings at conglomerate level.

3. Thresholds for deduction of participations

IWCFC currently regards the potential for regulatory arbitrage as low. Therefore the IWCFC would propose neither amendments of the sectoral rules, nor the implementation of a financial conglomerate specific rule. The IWCFC would rather leave it to the supervisory discretion to intervene, if necessary, on a case-by-case basis to avoid arbitrage.

In our opinion, a level playing field should be reached between the two sectors. Nevertheless, from a financial conglomerates' perspective, the different thresholds for deductions of holdings in banks could perhaps provide room for regulatory arbitrage. We wish to propose that a cross-sectoral alignment of the rules on mandatory deduction of participations should continue be kept in sight in order to ensure a level playing field.

Irrespective of this, we want to mention a problem in the definition of participation provided by the art. 57 (o) of the Directive 2006/48/EC (Capital Requirements Directive – CRD). In particular, the reference to the “a durable link” stated by Directive 78/660/EEC opens the door to subjective (and diverging) evaluation by national supervisors, which may create an unlevel playing field among market participants. Moreover such interpretations made difficult to assess precisely the impact of the different thresholds at conglomerate level.

We request a review of the art. 4 (10) of the CRD in order to make clear that “participation” means the ownership, direct or indirect, of 20% or more of the voting rights or capital of an undertaking. This would create a single rule applicable in the same way across Member States.

If the reference to “durable link” is maintained, any criteria to define this term should be geared to whether the participation allows a significant influence to be exercised on the held entity. Furthermore, the regulatory definition should be based whenever possible on the applicable accounting definition of a durable link.

Therefore, as proposed by the IWCFC *sub* point 2 “*Unrealised gains and revaluation reserves*”, we request Member States to striving for more consistency in their national transposition of the sectoral rules.

4. Methods and approaches to consolidation

The IWCFC recommends calculation of the own funds of financial conglomerates on the basis of consolidated accounts (accounting) as the default method and is considering dropping the book value/requirement deduction method. We welcome the proposal but are concerned over the timing of the proposed change to remove Method 3 as an option.

At the same time, we believe that adopting solely the accounting consolidation method would be inappropriate and are in favour of additionally retaining the deduction and aggregation method along with the possibility to use a combination of these methods.