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*Banking supervision
And Accounting issues Unit
The Director*

Paris, October 5th 2012

French Banking Federation response to EBA, EIOPA and ESMA's Joint Consultation Paper on Draft Regulatory Technical Standards on the uniform conditions of application of the calculation methods under Article 6.2 of the Financial Conglomerates Directive (JC/CP/2012/02).

Dear Madam,

The French Banking Federation (FBF) is the professional body representing the interests of the banking industry in France. Its membership is composed of all credit institutions authorised as banks and doing business in France, i.e. over 450 commercial, cooperative and mutual banks operating in France. It includes both French and foreign-based organizations.

FBF banks welcome the opportunity to answer the Joint Committee Consultation Paper on its Draft Regulatory Technical Standards on the uniform conditions of application of the calculation methods under Article 6.2 of the Financial Conglomerates Directive.

As a preliminary comment, we would like to underline that the Financial Conglomerate Directive provides a robust and efficient regulatory framework which allows for the sound development and oversight of the bank-insurance model. The priority in our view lies first and foremost in the finalisation of the Basel3/CRD4 and Solvency II reforms, and their proper implementation.

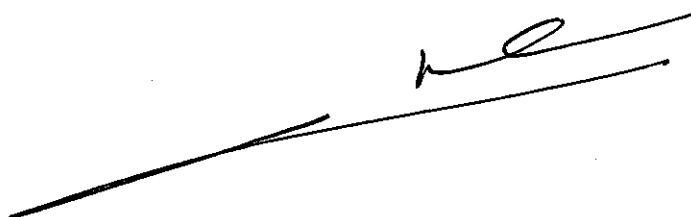
We find this Draft useful and we agree with most of its proposals. However we still have reservations on some of them. Focusing on what we think are the most important issues, our concerns relate to the extensive way the agencies have interpreted their mandate (Article 6 and Article 8) and on the transferability issue (Article 4).

**Ms Linda van GOOR
Secretary to the European Financial
Conglomerate Committee
European Commission
Rue de la Loi 200
B-1049 Brussels**

You will find in the annex our answer to the questions raised in the consultation paper.

We thank you for the consideration of our remarks and remain at your disposal for any question or additional information you might have.

Yours sincerely,

A handwritten signature in black ink, consisting of a long horizontal line with a stylized, cursive flourish above it.

Jean-Paul Caudal

Annex

French Banking Federation response to ESAs Consultation Paper on its Draft RTS on the uniform conditions of application of the calculation methods under Article 6.2 of the Financial Conglomerates Directive.

We welcome this Draft RTS on the uniform conditions of application of the calculation methods under Article 6.2 of the Financial Conglomerates Directive and we appreciate the opportunity given to us to comment on it.

Our response to the ESAs consultation is divided in two parts:

- General remarks, highlighting the most significant comments from FBF banks;
- RTS review, which sets out detailed answers to the questions raised by the ESAs in the accompanying documents.

General Remarks

Comments on Article 6 and Article 8:

The agencies have interpreted their mandate extensively, moving from the *conditions of applicability* of the Annex I of the Financial Conglomerate Directive 2002/87/EC to the *modalities* of its application. From a legal standpoint, the RTS required by Article 46 of the CRR should not lead to changes in Level 1 texts which seems to be the case in Article 6(2) and Article 8 of the current Draft. Therefore, we think that these Articles should be removed or thoroughly modified.

• **Article 6 - Consistency**

Article 6.2: For the purpose of Article 6(2) and Annex I to the Directive, for a banking led conglomerate, where Article 46(1) of the CRR is applied, the coordinator, after consulting with other competent authorities concerned, shall decide the most prudent method to be applied by the financial conglomerate.

We understand that the coordinating supervisor will have to select, between methods 1, 2 and 3 of the Directive, the most prudent one. Where the competent authorities are satisfied that the level of integrated management, risk management and internal control is adequate within a financial conglomerate, method 1 should apply. In any case, the calculations under only one method shall be required.

However, Annex I of the Directive states only that:

"[...] Member States shall allow their competent authorities, where they assume the role of coordinator with regard to a particular financial conglomerate, to decide, after consultation with the other relevant competent authorities and the conglomerate itself, which method shall be applied by that financial conglomerate."

Article 46(1) of the CRR adds that, where the competent authorities require or permit institutions to apply methods 1 or 2 of Annex I of Directive 2002/87/EC, the competent authorities may permit institutions not to deduct the holdings of own funds instruments of a financial sector entity in which the parent institution if (notably) the competent authorities are satisfied that the level of integrated management, risk management and internal control regarding the entities that would be included in the scope of method 1 or 2 is adequate.

Therefore, we ask for the removal of recital (12). Article 6.2 should also be removed or re-written as follows:

Method 1 shall apply, provided that the level of integrated management, risk management and internal control regarding the entities included in the perimeter of consolidation under method 1 is adequate. If this condition is not met, competent authorities will require a financial conglomerate to apply either method 2 or 3.

- **Article 8 - Solvency Requirement**

Directive 2002/87/EC does not deal with capital buffers and with Pillar 2. The Joint Forum itself doesn't require a capital buffer at the financial conglomerate level which would be the sum of the banking and insurance activities' Pillar 2 requirements. Going one step further, we think that it would be difficult to argue that the risk of combined banking and insurance activities is equal to, or greater than, the sum of these two activities' standalone risks. Nothing in recent events supports this statement.

This comment applies also to capital buffers. Therefore, the mention of "capital add-ons", "buffers" or "any other requirement applicable under European Union law [...]" should be removed from the definition of capital requirements, as part of this RTS.

We remind you that the solvency requirement for banks is defined by Article 87(1) of CRR as the following own funds requirements:

- (a) a Common Equity Tier 1 capital ratio of 4.5%
- (b) a Tier 1 capital ratio of 6%
- (c) a total capital ratio of 8%.

Capital buffers, and more generally Pillar 2, are not part of these requirements. And the same applies to the insurance sector.

We also remind you that Annex I (1.2 Other technical principles) of the Directive states that:

"(ii) pending further harmonisation of sectoral rules, the solvency requirements for each different financial sector represented in a financial conglomerate shall be covered by own funds elements in accordance with the corresponding sectoral rules [...]"

Therefore, it seems to us that Article 8 should be modified as follows:

"For the purpose of the calculation of the supplementary capital adequacy requirements of the regulated entities in a financial conglomerate, a solvency requirement shall satisfy either of the points laid down in (a) and (b):

- (a) Where the rules for the insurance sector are to be applied, solvency requirement means the Solvency Capital Requirement as defined by Article 100 or 218 of Directive 2009/138/EC as applicable, ~~including any capital add-on applied in accordance with Articles 37, 231(7) or 232 of the same directive as applicable, and any other capital or own funds requirement applicable under Union legislation.~~
- (b) Where the rules for the banking or investment services sector are to be applied, solvency requirement means ~~the sum of own funds requirements as defined by Articles 87 to 93 of CRR, combined buffer requirements as defined by Article 122 of CRDIV, and specific own funds requirements as defined by Article 100 of [CRDIV], and any other requirement applicable under European Union law.~~

Last, it seems to us critical to remind you that Annex I of the Directive doesn't ask for any solvency ratio at the financial conglomerate level. In the three methods, "the supplementary capital adequacy requirements shall be calculated as the difference [...] the difference shall not be negative."

We think in order to avoid any ambiguity, this principle should appear in the beginning of Article 14 (Technical calculation methods) of the RTS, and also in the Executive Summary (see: Technical calculation methods).

Article 46 (3b)¹ of the draft CRR calls for a solvency ratio at the conglomerate level. Even if the concept of a conglomerate ratio were to be maintained in the level 1 CRR text, it would not be legally acceptable to define it as proposed under the RTS (i.e. by including all capital add-ons, capital buffers, etc. in solvency requirements) as it would basically amount to making Pillar 2 notions public, which have always been construed as confidential in the regulation. An alternative way that would be consistent both with the CRR and the Solvency 2 Directive, would involve in consistency with CRR if confirmed, disclosing a "coverage ratio". This ratio would be calculated as total regulatory capital at group level in accordance with this RTS divided by solvency requirements as defined by Art. 87 to 93 of the CRR and by Art. 100 or 218 of Directive 2009/138/EC and factoring in adjustments required by the RTS – but which would need to take into account the other comments of this document.

Moreover, should a coverage ratio of a financial conglomerate be required under Art.46 of the CRR, it would be advisable to clarify how it should be calculated using method 2.

Comment on Article 4:

- **Article 4 - Transferability and availability of own funds**

Article 4, Point 1(a) aims to ensure that own funds are included at conglomerate level only if there are no impediments to their transfer across different conglomerate entities, including across sectors. Article 4, Point 1(b) establishes a timeframe for the transferability of funds across conglomerate entities. This timeframe introduces a huge differentiation depending on the nature of the entities considered. When funds must be transferred to an insurance company, "in due course" means "no later than **nine months**"; when funds must be transferred to a CRR entity, it means "no later than **three calendar days**".

This proposed timeframe is highly questionable (see the three calendar days "with no impediments on the coordinator requiring a faster transfer if necessary"!). Moreover, this timeframe in itself goes far beyond the sense of Directive 2002/87/EC which only refers to "the effectiveness of the transferability and availability of the own funds across the different legal entities in the group"². Therefore the transferability of funds across conglomerate entities is not a liquidity issue and it would be an error to consider, as a prerequisite, that capital has to be "liquid".

The main objectives are to ensure that there is no double counting and that capital is available within the financial conglomerate "in due course" i.e within a delay consistent with the circumstances. Consequently, the conglomerate must be in a position to demonstrate to its coordinating supervisor (with an action plan if necessary) that such a transfer responds to the situation and that it doesn't affect durably its sectoral solvency.

¹ See the amendment in the Regulation of the Council as of may 21st 2012, which is retained by the Cyprus presidency in its compromise proposal dated august 28st 2012.

² Annex 1 [...] when calculating own funds at the level of the financial conglomerate, competent authorities shall also take into account the effectiveness of the transferability and availability of the own funds across the different legal entities in the group, given the objectives of the capital adequacy rules.

Our proposals are :

1. Article 4, paragraph 1 (b): To remove **any reference to a specific timeframe** whatever the entity is;
2. Article 4, paragraph 3: To add "that is assessed by the coordinating supervisor" such as listed below

"The financial conglomerate shall demonstrate that measures have been taken to mitigate the risk that transfer of funds would have a material effect on the transferor's solvency **that is assessed by the coordinating supervisor.**"

RTS Review - Responses to questions

Q1 - What are the cost implications of a requirement for conglomerates to follow the clarifications for calculating own funds and solvency requirements described in this paper? If possible, please provide estimates of incremental compliance cost that may arise from the requirements, relative to following the Directive in the absence of the Regulatory Technical Standards.

1. Implementation costs of the draft RTS will be significantly higher than following the Directive in the absence of the RTS.
2. Firstly, the current financial conglomerate observation ratios are calculated once a year (as-of year-end)³. As mentioned in detail in our answer to the question Q6 below, the draft RTS will require the implementation of a specific consolidation process under method 1.
3. Secondly, the distinction made in the draft RTS between cross-sectoral and specific sectoral own funds would require financial conglomerates to analyse all non intra-group capital instruments issued by all legal entities, in light of both the Solvency 2 and Basel 3 eligibility criteria. Moreover, compliance with both sets of criteria combined with more stringent requirements applicable to financial conglomerates (transferability in due course) would inevitably increase the cost of capital for financial conglomerates in comparison to capital issued by institutions applying only sectoral rules, all other things being equal.
4. Thirdly, the draft RTS poses a significant level playing field issue to banking led conglomerates, as they would have to take measures in order to ensure immediate transferability of capital instruments⁴ across the whole group whereas insurance led conglomerates would benefit of a nine months period. Even though it remains to be determined how this would be actually applied, we may already expect that such a requirement would increase the costs of eligible capital instruments of banking led financial conglomerates as investors will probably require higher spreads, to account for the requirement of immediate transferability across the group.

³ The current FICO Directive provides that the coordinator shall ensure that the calculation ... is carried out at least once a year.

⁴ In less than 3 calendar days to entities subject to the CRR with no impediments on the coordinator requiring a faster transfer if necessary.

5. Fourthly, according to the draft proposal, the onus would be on institutions to verify the absence of any practical, legal, regulatory, contractual or statutory impediments to the transfer of own funds for each cross-sectoral capital instruments, while under the current FICO Directive, Annex I states that *“when calculating own funds at the level of the financial conglomerate, competent authorities shall also take into account the effectiveness of the transferability and availability of the own funds across the different legal entities in the group”*. According to the draft proposal, the burden of proving transferability of capital instruments would thus be conferred to institutions, requiring the monitoring of each cross-sectoral capital instruments with respect to its transferability in due course to other legal entities. This will increase significantly the cost of compliance with the proposed RTS in comparison to the FICO Directive in force.
6. For all the reasons above, we expect the cost of compliance with the proposed RTS to be significantly higher than the cost of compliance with the FICO Directive, particularly in the case of banking-led financial conglomerates.

Q2. How, in your opinion would the proposed clarifications impact on conglomerates' business models?

7. Prior to answering to the question, it is worth underlining the provisions of the draft RTS that will have the most significant impacts on conglomerates' business models.

A radical change to the definition of capital requirements

8. Art. 8 states that all capital buffers (systemic, Pillar 2, contra-cyclical, etc.) in both sectors (insurance, banking) shall be taken into account in the calculation of a financial conglomerates capital requirements: (a) *« including any capital add-on... and any other capital or own funds requirements applicable under Union legislation” and at paragraph (b) “combined buffer requirements... and any other requirement applicable under European Union law”*.
9. In the banking and insurance sectors, capital buffers requirements are not included in the calculation of solvency requirements. In the banking sector, capital buffers are taken into account through an increase of the capital requirements computed in reference to an 8% ratio, as mentioned at Art. 87 of the draft CRR. Moreover the conservation, counter-cyclical and systemic buffers imply constraints on profit distribution but do not modify the capital requirements calculation. Finally, some of the applicable capital buffers under CRD IV (e.g. SIFIs, Pillar 2) would be set by national authorities, which may further increase disparities of treatment across financial conglomerates in the European Union. Insurance companies usually monitor their solvency margin requirements beyond 100% of their solvency requirements (the SCR under Solvency 2), but solvency requirements per se are not modified because of capital buffers requirements. Thus, by including capital buffers in the solvency requirements, the draft RTS changes the concept of “capital requirement”, in particular as it is defined by the CRD IV and CRR, which is questionable from a legal standpoint as it brings changes in definitions set out in levels 1 and 2 texts. Art. 87 (1) of the draft CRR refers itself to a total capital ratio of 8% in the definition of own funds requirements and the FICO Directive does not deal with any capital buffers or Pillar 2 requirements. **Thus, by including capital buffers in a financial conglomerate capital requirements, the draft RTS introduces a radical change to the definition of capital requirements in comparison to the draft CRD IV / CRR and to the FICO Directive.**

Level playing field issues

10. Article 4 states that own funds in excess of solvency requirements would be limited to those “transferable in due course” (i.e. in less than 3 calendar days to entities subject to the CRR regulation and in less than 9 months to entities subject to the Solvency 2 directive), without any reference at all to the current provisions existing in sectoral regulations.
11. This provision raises level playing field issues between institutions that are financial conglomerates and those who aren't, as they introduce discrepancies with the sectoral provisions and also between financial conglomerates, depending on their dominant activity. In both sectors, capital serves the same purpose. Hence there aren't any reasons to provide with differentiated constraints on transferability between both sectors.
12. Firstly, transferability is defined as follows in the draft RTS: *“there are no practical, legal, regulatory, contractual or statutory impediments to the transfer of funds or repayment of liabilities across conglomerate entities in due course. This is the case when the transfer of own funds from one conglomerate entity to another is not barred by a restriction of any kind and there are no claims of any kind from third parties on these assets”*. However, transferability is differently defined in sectoral regulations. For example, at Art. 6(1) of the draft CRR *“there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by its parent undertaking”*, without any reference to regulatory, contractual, statutory impediments or restriction of any kind from third parties nor to a definition of a prompt transfer. Hence, transferability, as defined in the draft RTS, appears to be far more stringent than in sectoral regulations. An institution would thus be subject to higher restrictions on capital eligibility, depending on its qualification as a financial conglomerate or not.
13. Secondly, ‘due course’ would have a different meaning for insurance and banking sectors. According to the draft RTS, this is justified by *“the fact that entities subject to CRR, due to the nature of their activities, are more vulnerable to a rapid deterioration in confidence and/or sudden resolution situation”*. It would be worth clarifying through examples whether those situations deal with solvency or liquidity issues and whether *“a rapid deterioration in confidence applies”* to banking led conglomerates only, if it is ascertained that it relates to solvency issues. A rapid and sudden deterioration in confidence is usually due to liquidity issues while solvency ratios may be more than satisfactory. In such cases, it would be questionable whether a reallocation of capital across a financial conglomerate would solve a liquidity issue in due course. Moreover, from a practical standpoint, three calendar days is simply impossible to be achieved. Should the ESAs decide to maintain provisions on transferability in the RTS, timeframes for capital transfer to entities subject to the CRR should be harmonized with the timeframe provided for insurance entities (i.e. nine months), as capital serves the same purpose in both sectors.

More stringent requirements impose on banking led financial conglomerates

14. Article 6(2) states that, in the case of a banking-led conglomerate, the coordinating supervisor would have to choose the most prudent method between methods 1, 2 and 3 for the purpose of financial conglomerate supervision. In that case, we don't see why this should apply to banking led financial conglomerate only. In addition, it would be a significant change to the provisions in the draft CRR which states at Art. 46, that where the competent authorities require or permit institutions to apply methods 1 or 2 of Annex I to Directive 2002/87/EC, *“the competent authorities are satisfied that the level of integrated management, risk management and internal control regarding the entities that would be included in the scope of method 1 or 2 is adequate”*.

Impacts on financial conglomerates' business models

15. Their insurance activities allow French banking groups to significantly enlarge the range of products at a competitive price, they offer to their retail customers through a common distribution channel. Over the last couple of decades, the banking – insurance business model has proved to be a resilient and efficient partnership in France, capitalizing on the synergies of the two operational activities. This was particularly demonstrated in the recent financial crisis.
16. But, under the draft RTS, more stringent requirements would be imposed on financial conglomerates than on institutions that are not qualify as financial conglomerates (transferability of own funds, cross-sectoral capital instruments must comply with two sets of criteria). As it is currently drafted, the RTS is in fact an incentive to limit the offering of both insurance and banking services within the same group, given the expected impacts of the draft RTS on the financial conglomerates' return on equity.
17. In order to adjust their business model to those new requirements, financial conglomerates will possibly consider various options:
 - focus on their dominant activities, hence reducing the diversification benefits inherent to their current risk profile;
 - reduce share of capital in their subsidiaries belonging to their secondary sector (insurance for banking-led conglomerates and banking for insurance-led conglomerates), possibly by increasing complexity of governance arrangements;
 - pass the increase in costs on to their customers, at least partly;
 - consider reduction in activities in their secondary sector.
18. Finally, it is worth underlining that the impacts of the draft RTS will be far more significant in the case of banking-led financial conglomerates than in the case of insurance-led financial conglomerates, as the draft RTS includes specific and higher requirements applicable to banking-led conglomerate only (see the paragraphs above '*level playing field issues*' and '*more stringent requirements impose on banking led financial conglomerates*').

Q3. How far would the suggested clarifications change current market practices?

19. No additional comments to the ones already provided in our response to Q2.

Q4. Are the Technical Principles in Title II sufficiently clear? If not, what areas require further clarification?

Cross-sector holdings

20. The current drafting of Article 11 which deals with cross-sector holdings is not fully in line with the explanatory note which states that "*at sectoral level, holdings may receive a risk weight or capital charge. At the financial conglomerate level, the same holding may be deducted or eliminated from own funds through consolidation, making the risk weight or capital charge superfluous. This capital charge shall thus not be applied for the purposes of the calculation of the conglomerates solvency requirements*".
21. Yet, Article 11 refers to cross-holding mentioned at Art. 14(3) and 14(4). Article 14(3) actually deals with only a limited number of cross-holdings and Article 14(4) deals with unconsolidated investments, participations and holdings of banking-led conglomerates in credit institutions or investment firms and not with cross-sector holdings. Finally, Article

11 covers also cross-sector investments and holdings eliminated through consolidation under method 1. Therefore, we would suggest the following change to the Art. 11: *“where an insurance holding of a bank-led financial conglomerate or an investment firm-led financial conglomerate is eliminated pursuant to Articles 14 ~~3~~ and 14.4 or Article 15.2 or the application of these Articles as part of Method 3, no capital charge for that holding shall be applied at the financial conglomerate level for the purpose of supplementary supervision, even if a capital charge is applied at sectoral level.”*

Eligible capital instruments under Solvency 2

22. Art. 2 states that capital instruments of insurance are defined as “capital instruments referred to as ‘own funds’ in Directive 2009/138/EC”. However, this definition might exclude some eligible elements under Solvency 2 that are not explicitly included in the definition of “own funds” set out at Article 87 of the Solvency 2 Directive, in particular surplus funds, as defined at Article 91 of that Directive. It would thus be advisable to define capital instruments of insurance as **“eligible items in under Directive 2009/138/EC to cover solvency requirements”**.

However, Art. 10 which defines sector specific own funds mentions “own funds recognised under sectoral rules”. It is thus unclear whether all eligible items to cover solvency requirements are actually eligible to cover insurance capital requirements as part of the financial conglomerates supervision.

Cross sectoral own funds

23. Art. 5 provides that cross sectoral own funds are *“(b) elements that meet both sets of rules for additional Tier-1 in accordance with regulation .../2012/EC and Tier-1 [restricted basic own funds in accordance with directive 2009/138/C” and “(c) elements that meet both sets of rules for Tier-2 in accordance with regulation .../2012/EC and Tier-2 in accordance with directive 2009/138/C”*. In most cases, it will be impossible to satisfy those conditions, given the more stringent definition of capital under the CRR and the existence of sector-specific criteria in the draft sectoral regulations. Below are listed a few examples of criteria not applicable to both sectors:

- the provisions governing the write-down or conversion of additional Tier-1 at Art. 51 of the CRR;
- under Solvency 2, basic own-fund items might be either undated or have an original maturity of at least 10 years, while under the CRR, Tier-1 instruments shall be perpetual.

As a consequence, the definition of cross sectoral own funds at Art. 5 of the draft RTS should provide that only criteria equally defined in both sectors shall be used to determine whether a capital instrument qualifies or not as a cross-sectoral instrument.

Q5. Are there any areas of ambiguity in the way that the Technical Principles in Title II apply to the three consolidation methods?

Eligibility of specific own funds

24. Art. 10 introduces limits on sector specific own funds eligible to cover a financial conglomerate solvency requirements: sector specific own funds wouldn't be eligible beyond the sectoral capital requirements. It is worth noting that this provision is radically different from the current FICO directive which does not provide any limits in the eligibility of sector specific own funds: *« the elements eligible are those that qualify in accordance with the relevant sectoral rules »*.

25. The explanatory text provided at Art. 10 of the draft RTS states that *“in practice, this means that, for each relevant entity or group of entities, conglomerates need to first count sector-specific own funds against their requirements (while respecting sectoral rules and limits)”*. As a consequence, it would be worth adding the explanatory note in the draft RTS itself: ***“sector-specific own funds are first count against requirements in the corresponding sector. This calculation rule is applied by entity or group of entities, in consistency with the technical calculation method applied and in compliance with rules and limits applied for the calculation of sectoral solvency ratios”***.

Method to be applied by financial conglomerates

26. Article 6(2) states that, for a banking led conglomerate applying Art. 46(1) of the CRR, the coordinating supervisor *“after consulting with other competent authorities concerned, shall decide the most prudent method to be applied by the financial conglomerate”*. As mentioned in our general remarks on article 6 and at paragraph 14 above, this paragraph raises interpretation and level playing field issues, it might possibly increase even more the cost of compliance with this RTS and, finally, it may conflict with some provisions of Art. 46 in the draft CRR.
27. As a consequence, in order to avoid ambiguity and any level playing field issue, we suggest clarifying this RTS by removing recital (12) and Art. 6(2) or replacing this article by the following paragraph ***“Method 1 shall apply, provided that the level of integrated management, risk management and internal control regarding the entities included in the perimeter of consolidation under method 1 is adequate. If this condition is not met, competent authorities will require a financial conglomerate to apply either method 2 or 3”***.

Q6. Are there any areas of ambiguity in the way that Method 1 needs to be carried out?

Consolidation

28. As-of today, method 1 as currently applied by French banks is fully based on the accounting consolidation, without any changes to the accounting value of assets and liabilities nor any discrepancy between the perimeter of accounting consolidation and of supplementary supervision. Article 14(1) confirms this calculation process would continue to apply: *“the own funds of a financial conglomerate shall be calculated on the basis of the consolidated accounts (according to the relevant accounting framework) applied to the scope of supplementary supervision of the directive”*.
29. However, the last part of the sentence *“applied to the scope of supplementary supervision of the directive”* might be confusing as it suggests there may actually be discrepancies between the perimeter of accounting consolidation and that of supplementary supervision. **FBF banks consider that the supplementary supervision should be aligned with the accounting consolidation perimeter.**
Banking groups already consolidate their material risks. Indeed, according to the current accounting standards (IAS/SIC12), and even more with the new principles (IFRS10), the controlled SPV are included in the accounting consolidation perimeter. As the accounting principles are based both on power and on exposure to risks and rewards, the conglomerate’s consolidation perimeter is aligned with its exposures to risks. However, the perimeter of supplementary supervision may exclude entities whose inclusion would lead to inappropriate figures, subject to approval by the competent authority on a case-by-case basis (e.g. temporary holdings).

30. In addition, according to the recital (15), in relation to Article 14(8), the valuation of assets and liabilities calculated for the purpose of Solvency 2 in the consolidation accounts shall be taken into account. Those valuation rules may be different from the valuation rules used for accounting purpose. This may contradict the provision of Art. 14 (1) which states that *“the own funds of a financial conglomerate shall be calculated on the basis of the consolidated accounts (according to the relevant accounting framework)”*. In practice, this will actually require the implementation of a specific consolidation procedure only for the calculation of a financial conglomerate observation ratio.
31. As a consequence, it would be advisable to bring the following changes to Art. 14(1): *“the own funds of a financial conglomerate shall be calculated on the basis of the consolidated accounts (according to the relevant accounting framework and taking account of the provisions set out at Art. 14(8)) applied to the scope of supplementary supervision of the directive”*.
32. The rationale behind the treatment of unconsolidated insurance entities in a bank-led conglomerate under Method 1 (fully deducted in accordance with Art. 14 (3)) should be clarified. Moreover, it might lead to an asymmetrical treatment compared to Method 2, where the treatment is unambiguously to take into account solvency requirement and not actual equity holdings where the holding is a participation.

Q7. How much of an operational burden is the use of consolidated accounts of the conglomerate as a starting point for Method 1? Is there an alternative more straightforward method/way to eliminate the intra-group creation of own funds?

33. We consider that the use of accounting consolidated accounts is the more straightforward method to eliminate the intra-group creation of own funds for method 1.

Q8. Do you foresee any problems in applying sectoral rules to own funds under Method 1? If so, what refinements to the method would you propose?

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

Q9. Are there any areas of ambiguity in the way that Method 2 needs to be carried out?

35. It would be worth clarifying, in Art. 15, that intra-group exposures should be eliminated from capital requirements, in order to ensure consistency with the rules applied for capital calculation. Moreover, as already mentioned above, we strongly advocate against taking into account capital buffers in the solvency requirements as this is a radical change to Level 1 texts. Having said that, it is worth noting that the inclusion of capital buffers in solvency requirements would lead to significant discrepancies between methods 1 and 2, given capital buffers applied on a solo basis may be far different from those applied on consolidated basis.

Q10. For the purpose of assessing the transferability of “funds” to entities subject to CRR, under Article 4, is “three calendar days” a sufficient timeframe in a period of stress?

36. The ‘three calendar days’ is justified in the draft RTS by *“the fact that entities subject to CRR, due to the nature of their activities, are more vulnerable to a rapid deterioration in*

confidence and/or sudden resolution situation". As mentioned in the answer to Q2, it would be worth clarifying which stressed situations would be actually addressed through this provision. It is indeed questionable whether a reallocation of capital within the Group decided in an emergency situation would actually resolve a rapid and sudden deterioration in confidence due to liquidity issues.

37. **Any provision regarding transferability of capital instruments in the context of this draft RTS should be dealt in accordance to the sectoral rules for both the definition of transferability and of timeframes.** Failing to achieve consistency with sectoral rules will give rise to level playing field issues between players active in one sector only and financial conglomerates.
38. Should the ESAs decide to implement a different timeframe between insurance and banking entities, we don't see any reason for a different timeframe between the 2 sectors, as far as solvency issues are concerned. Failing to implement a common timeframe, will create an additional level playing field issue among financial conglomerates.