



FEDERATION  
BANCAIRE  
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2014.01.24

## **FBF comments on EBA consultation on own funds part IV (CP/2013/43)**

### **I – Key messages**

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 appreciates the opportunity to comment on this consultation paper on own funds part III. Nevertheless, according to our interpretation of article 28 of CRR, instruments issued by mutuals, cooperative societies, savings institutions or similar institutions should be excluded from the constraints of multiple dividend.

### **Distribution of capital instruments of non-joint stock companies.**

Article 28(1) of CRR set out conditions to be met by capital instruments to be included in CET1. One of these conditions relates to the distribution of such instruments:

#### **Article 28:**

“ ...

1.h) the instruments meet the following conditions as regards distributions:

- i. there is no preferential distribution treatment regarding the order of distribution payments, including in relation to other Common Equity Tier 1 instruments, and the terms governing the instruments do not provide preferential rights to payment of distributions;
- ii. distributions to holders of the instruments may be paid only out of distributable items;
- iii. the conditions governing the instruments do not include a cap or other restriction on the maximum level of distributions, **except in the case of the instruments referred to in Article 27;**

... ”

3. The condition laid down in point (h)(iii) of paragraph 1 shall be deemed to be met notwithstanding the instrument paying a dividend multiple, provided that such a dividend multiple does not result in a distribution that causes a disproportionate drag on own funds.

... ”

*The point 3 above refers to paragraph 1.h) iii) of the same article, which excludes instruments referred to in Article 27. It does not apply to instruments issued by mutuals, cooperative societies, savings institutions or similar institutions.*

*This point is further reinforced by the introduction of a new paragraph to Article 28, which deals specifically with differentiated distributions for these instruments.*

“4. For the purposes of point (h) (i) of paragraph 1, differentiated distributions shall only reflect differentiated voting rights. In this respect, higher distributions shall only apply to Common Equity Tier 1 instruments with fewer or no voting rights.”

*Conditions relating to multiple or disproportionate distributions no longer apply to instruments issued by mutuals, cooperative societies, savings institutions or similar institutions.*

*The application of differentiated distributions is limited to equity instruments with different or no voting rights (Article 28.4).*

### **Preferential distributions**

Regarding the meaning of preferential distributions (article 7 c):

The links between the “d” provision and the “e” provision should be clarified.

Indeed, if the “d” provision is respected, it is not possible to respect the “e” provision; we propose to clarify with this wording:

“(e) There are differentiated levels of distributions, other than under Art. 7c(d), unless where the conditions of Article 7b are met.”

## II - Answer to specific questions

Q1: How do you assess the suggested limits of 125% under Article 7b (1)(a) and 105% under Article 7b(1)(b) for joint stock companies (or non-joint stock companies, where applicable)?

Yes, we agree on the limits.

Q2: How do you assess the proposal to disqualify all dividend multiple instruments when the 105% limit is breached, for joint stock companies or non-joint stock companies, where applicable? In which circumstances would this limit not work or be breached without the institution being able to prevent this breach?

Yes, we agree on the proposal to disqualify all dividend multiple instruments when the 105% limit is breached, for joint stock companies or non-joint stock companies.

We have no example on circumstances for which this limit does not work or is breached without the institution being able to prevent this breach.

Q3: Is the application of the different tests clear? How do you assess the approach retained for non-joint stock companies?

Yes it is

Q4: How do you assess the applicability of the conditions in paragraph 2?

We agree on the applicability of the conditions.

Q5: Is the chosen approach applicable to all instruments that may be issued by non-joint stock institutions?

No, the chosen approach should not be applicable to all instruments issued by non-joint stock institutions.

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*The application of differentiated distributions is limited to equity instruments with different or no rights votes (Article 28.4).*

Q6: How do you assess the proposed levels of 30% for the payout ratio in paragraph 5(d) of Article 7b?

Cf. response to question 5

Q7: please provide data on the distributions on instruments as well as possible references to be used as benchmarks for the distributions on voting instruments issued by non-joint stock companies. How would you assess that distributions on voting instruments issued by non-joint stock companies are low? Can you suggest a methodology?

Cf. response to question 5