

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

(JC / CP / 2014 /02)

Response from the EBA Banking Stakeholder Group

The BSG welcomes the opportunity to respond to the EBA, EIOPA and ESMA¹'s Joint Consultation Paper on the guidelines on the convergence of supervisory practices relating to the consistency of supervisory coordination arrangements for financial conglomerates.

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

- **General remarks**, highlighting the most significant comments ;
- **Guidelines review**, which sets out more detailed answers to the questions raised by the ESAs in the accompanying documents.

The ESA's guidelines make for a significant step towards the cross-sectoral and cross-border convergence of supervisory arrangements applicable to financial conglomerates. These are of the utmost importance to ensure that a level-playing field is achieved, in particular between banking-led and insurance-led financial conglomerates, in a context where banking regulation is far more demanding both in terms of capital requirements and of capital definition. In general, there is a need for further clarification with regards to the cooperation between the Single Supervisory Mechanism (SSM), the supervisory colleges and national supervisory authorities if a bank-led conglomerate is deemed "significant".

We strongly believe that Solvency 2 and CRD 4 are the two sectoral Pillars of the financial conglomerates supervision, since banks and insurers have different core business models. Both these prudential frameworks have strong impacts on those institutions' business models and are resource -consuming. In this regard, we believe that reporting requirements applicable to financial conglomerates should lie first and foremost on regulatory reportings already required under the sectoral regulations and under the financial conglomerate directive.

Supervisory arrangements for financial conglomerates should seek to focus on possible specific risks that might be posed by financial conglomerates, where they exist, and should not add an additional layer of reporting and undue constraints which have the effect of penalising a business model that proved to be resilient in the EU during the financial crisis in 2008 /2009.

GENERAL REMARKS

Reporting requirements should leverage as much as possible on existing reportings

1. 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*

¹ ESAs (European Supervisory Authorities)

transactions". It is our view that it would be advisable to systematically consult with financial conglomerates on such regular exchanges of information.

2. In addition, it is worth noting that information is already provided on risk concentration and intra-group transactions under the financial conglomerate directive. Hence, it is our strongly-held view that duplication of requirements should be absolutely avoided in this respect and that existing regulatory reportings should be used to the greatest extent possible.

Assessment of the financial conglomerates' capital adequacy policies

3. In our opinion, the guidelines should clarify what would be more precisely assessed with respect to a 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 assessed and calculated. 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*".
4. That last sentence of Article 35 should be clarified or deleted since it will open the door to various interpretations and suggests that the supplementary supervision provided under Directive 2002/87/EC and supplemented by the aforementioned delegated act may not be actually suitable to adequately assess a financial conglomerate's capital adequacy.
5. This sentence goes 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)² and Article 9 (3a)³. 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.
6. Likewise, we advise against duplications of tasks between those performed at sectoral and 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 or not they are part of a financial conglomerate. 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.

² The risk management processes shall include adequate capital adequacy policies in order to anticipate the impact of their business strategy on risk profile and capital requirements as determined in accordance with Article 6 and Annex I.

³ The internal control mechanisms shall include adequate mechanisms as regards capital adequacy to identify and measure all material risks incurred and to appropriately relate own funds to risks.

7. The Guidelines refer to the system of supervisory colleges. Starting from November 4, 2014 bank-led financial conglomerates whose parent institution is deemed “significant” under the SSM will be subject to the supervision of a so-called Joint Supervisory Team (JST). JST will consist of representatives of national supervisory authorities relevant for the banking group and will operate under the management of a European Central Bank (ECB) coordinator. In this case the JST replaces the supervisory college. Sectoral supervisory colleges will continue to play an important role for those banking groups and bank-led financial conglomerates deemed “non-significant” under the SSM of the ECB. They will also supplement ECB supervision of “significant” banking groups with non-Eurozone subsidiaries. The guidelines should be updated accordingly to reflect the future European supervisory system.
8. Since the ECB will assume the role of the coordinator for bank-led financial conglomerates whose parent institutions are deemed “significant” it is of vital importance for a level-playing field in the EU that the ECB formally adopts the guidelines for the supervision of financial conglomerates and follows them like any national supervisory authority. The ECB-Regulation 1024/2013 EU emphasizes (in Recital 31 and 32 and Article 3) the importance of cooperation within the European System of Financial Supervisors (ESFS) with regards to issues of joint interest and to ensure proper supervision of credit institutions operating also in the insurance and securities sectors. The ECB is required to cooperate closely with the European Supervisory Authorities (ESA) and should follow the Guidelines of the ESAs as long as the direct supervision of banks falls within the competence of the ECB. This is also relevant for insurance-led financial conglomerates with relevant banking operations, where the ECB will be part of their administrative practice.
9. With the initiative of the Single Resolution Mechanism (SRM) and the Bank Recovery and Resolution Directive (BRRD) a EU-wide system of uniform provisions for recovery and resolution of banks is currently implemented. For example, the ECB in its function of being the competent supervisor has been tasked with numerous requirements relating to emergency and resolution planning according to the SRM-Regulation. The wording of the present guidelines should reflect, for example in para 30 and 54) the future recovery and resolution provisions, which require involved competent /resolution authorities to share information on various processes.

Deduction of capital investments of insurers in banking entities

10. 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)).
11. Up to now, that provision might have been interpreted differently across jurisdictions when it comes to capital instruments issued by a bank and subscribed to 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 to by policyholders as part of a life-insurance entity’s activities 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. Consequently, 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.

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

12. As mentioned in the general comments section above, 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*”) 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. This sentence should, therefore, be either clarified in order to align it with the provisions of the FICO directive, or deleted since it will open the door to various interpretations issues and issues arising from that.
13. As mentioned in the general comments section above, article 34 provides 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.
14. As also mentioned in the general comments section above, to harmonise supervisory practices in this area, the guidelines should clarify that regulatory capital instruments issued by an institution and subscribed to by policyholders as part of a life-insurance entity’s activities 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 enhances the seniority of the claim.
15. We suggest clarifying the notions of “emergency planning / emergency plans” referred to in article 54. It is not sure whether they actually refer to recovery and resolutions plans, to liquidity contingency planning, or to business contingency planning.

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 greatest extent possible, 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 strongly recommend to systematically consult with financial conglomerates on regular exchanges of information.

Submitted on behalf of the EBA Banking Stakeholder Group

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