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JC FINAL draft Regulatory Technical Standards

on the consistent application of the calculation methods under Article 6(2) of the Financial Conglomerates Directive under Regulation (EU) No 575/2013 (Capital Requirements Regulation -CRR) and Directive 2013/36/EU.



JC FINAL draft Regulatory Technical Standards on the consistent application of the calculation methods under Article 6(2) of the Financial Conglomerates Directive

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1. Executive Summary

The CRR/CRD IV texts¹ (the so-called Capital Requirements Regulation - henceforth 'CRR'- and the so-called Capital Requirements Directive – henceforth 'CRD') set out prudential requirements for banks and other financial institutions to apply from 1 January 2014.

The EBA, EIOPA and ESMA (hereafter 'the ESAs') through the Joint Committee, have developed the draft RTS in accordance with the mandate contained in Article 49(6) of the CRR and Article 150 of CRDIV (amending Article 21a of the Directive 2002/87/EC). These Articles provide the ESAs through the Joint Committee, shall develop draft Regulatory Technical Standards (RTS) with regard to the conditions of the application of Article 6(2) of Directive 2002/87/EC (hereafter 'the Directive').

Further the ESAs have developed the draft RTS having regard to Article 230 in connection with Articles 220 and 228 of Directive 2009/138/EC².

Main features of the RTS

The draft RTS puts forward rules in order to ensure that institutions that are part of a financial conglomerate apply the appropriate calculation methods for the determination of required capital at the level of the conglomerate.

They are based in particular on the following elements:

General Principles

- Elimination of multiple gearing;
- elimination of intra-group creation of own funds;
- transferability and availability of own funds; and
- coverage of deficit at financial conglomerate level having regard to definition of cross-sector capital.

Technical calculation methods

1. Method 1: 'Accounting consolidation method':

The FICOD provides in relation to Method 1 that the own funds shall be calculated on the basis of the consolidated position of the group.

¹

Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176 p. 1 as of 27 June 2013) and Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176 p.338 as of 27 June 2013).

² 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II). (OJ L 335/1 as of 17 December 2009)

According to this general provision, the calculation of own funds should be based on the relevant accounting framework³ for the consolidated accounts of the conglomerate applicable to the scope of the Directive.

The use of 'consolidated accounts' eliminates all own funds' intra-group items, in order to avoid double counting of capital instruments. According to the Directive provisions, the eligibility rules are those included in sectoral provisions.

2. Method 2: 'Deduction and aggregation method'.

This method calculates the supplementary capital adequacy requirements of a conglomerate based on the accounts of solo entities. It aggregates the own funds, deducts the book value of the participations in other entities of the group and specifies treatment of the proportional share applicable to own funds and solvency requirements. All intra-group creation of own funds shall be eliminated.

3. Method 3: 'Combination of methods 1 and 2'.

The use of combination of accounting consolidation method 1 and deduction and aggregation method 2 is limited to the cases where the use of either method 1 or method 2 would not be appropriate and is subject to the permission of the competent authorities.

³ The relevant accounting framework means the accounting rules to which the institution is subject under Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions and Council Directive (91/674/EEC) of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings.

2. Background and rationale

The supplementary supervision of financial entities in a financial conglomerate is covered by the Financial Conglomerates Directive 2002/87/EC (FICOD). This Directive provides for competent authorities to be able to assess at a group-wide level the financial situation of credit institutions, insurance undertakings and investment firms which are part of a financial conglomerate, in particular as regards solvency (including the elimination of multiple gearing of own funds instruments).

Background and regulatory approach followed in the draft RTS

These draft regulatory technical standards (RTS) are produced in accordance with CRDIV/CRR text, which provide⁴ that the EBA, ESMA and EIOPA ('the ESAs'), through the Joint Committee, shall develop draft regulatory technical standards with regard to the conditions of the application of the calculation methods with regard to Article 6(2) of the FICOD and shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

The proposed draft RTS covers the uniform conditions for the use of the methods for the determination of capital adequacy of a financial conglomerate under the FICOD.

They elaborate on Technical principles applying to all of the three methods provided for by the FICOD; and also contain an Annex providing further details on Method 2.

⁴ The CRD IV proposal provides for amendments to the FICOD, in article 21a where the original empowerment for the Joint RTS was established (and indeed it now provides for a *regulatory* technical standard –RTS- instead of, previously, an *implementing* technical standard- ITS).

The CRR, on the other hand, includes, among others, rules for where banking groups include insurance undertakings. In that context, it allows, as an alternative to deduction, where consolidation is applied, the use by institutions of the FICOD methods of calculation. Given the details of the application of these methods still need to be defined, it also empowers the ESAs to develop RTS to that effect.

In other words, there are two legal bases, given the different ultimate 'uses' of the RTS: under the FICOD in order to define the capital required to be held for the purposes of the supplementary supervision of a financial conglomerate; and under the CRR in order to provide alternatives to deduction where consolidation is applied. The content of the RTS is nevertheless identical in both situations. The deadline for submission under the CRR is within one month that the CRR enters into force and the deadline under the CRD is within 5 months of application of Solvency II.

3. JC FINAL draft Regulatory Technical Standards on the consistent application of the calculation methods under Article 6(2) of the Financial Conglomerates Directive

Structure of the draft RTS

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COMMISSION DELEGATED REGULATION (EU) No .../..

of XXX

[...]

supplementing Directive 2002/87/EU of the European Parliament and of the Council of 16 December 2002 and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 27 June 2013 with regard to regulatory technical standards for the application of the calculation methods of capital adequacy requirements for financial conglomerates

of XX Month YYYY

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 27 June 2013 on prudential requirements for credit institutions and investment firms⁵ and in particular Article 49(6) thereof,

Having regard to Directive 2002/87/EC of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council⁶ and in particular to Article 21a(3) thereof,

Whereas:

- (1) For financial conglomerates which include significant banking or investment business and insurance business, multiple use of elements eligible for the calculation of own funds at the level of the financial conglomerate (multiple gearing) as well as any inappropriate intra-group creation of own funds should be eliminated in order to accurately reflect the availability of conglomerates' own funds to absorb losses and to ensure supplementary capital adequacy at the level of the financial conglomerate.
- (2) It is important to ensure that own funds in excess of sectoral solvency requirements are only included at conglomerate level if there are no impediments to the transfer of assets or repayment of liabilities across different conglomerate entities, including across sectors.

⁵ OJ L 176, 27.6.2013, p. 1

⁶ OJ L 35, 11.2.2003, p. 1

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- (3) A financial conglomerate should only include own funds that exceed sectoral solvency requirements in the calculation of its own funds if those funds are transferable across entities within the financial conglomerate.
 - (4) This Regulation should take into account that sector-specific own funds requirements are designed to cover risks relating to that sector, and are not intended to cover risks outside that sector.
 - (5) To ensure consistent application of the supplementary capital adequacy calculation the sectoral requirements which comprise solvency requirements for this purpose should be listed. This list should be without prejudice to the sectoral provisions concerning the measures to be taken following a breach of sectoral solvency requirements. In particular, where a deficit arises at the level of a financial conglomerate due to a breach in the combined buffer requirement under Chapter 4, Title VII of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, the necessary measures required should be based on those set out in that Chapter.
 - (6) When calculating the supplementary capital adequacy requirement of a financial conglomerate, with respect to non-regulated financial entities within the financial conglomerate, both a notional solvency requirement and a notional level of own funds should be calculated.
 - (7) Method 1 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)⁷ for calculating group solvency and method 1 of Directive 2002/87/EC for calculating supplementary capital adequacy requirements are considered equivalent to each other since both methods are consistent with the main objectives of supplementary supervision. Both methods ensure the elimination of intra-group creation of own funds and that the own funds are calculated in accordance with the definitions and limits established in the relevant sectoral rules.
 - (8) In order to ensure uniform conditions of application of method 3, it is necessary to ensure that competent authorities permit use of the method in similar circumstances and therefore apply common criteria, and require it to be applied in a way which is consistent across financial conglomerates. The competent authorities should allow the application of method 3 only for cases where a financial conglomerate can demonstrate that the application of method 1 or 2 solely would not be feasible. The use of the method should be consistent over time to ensure a level playing field.
 - (9) The empowerment to adopt regulatory technical standards in Article 49(6) of Regulation (EU) No 575/2013 is closely linked with the empowerment in Article 21a(3) of Directive 2002/87/EC, since both deal with consistent application of the methods of calculation laid down in the Annex to that Directive. To ensure coherence in the methods of calculation specified for the purpose of those legislative acts and to facilitate a comprehensive view and compact access to them by persons subject to those obligations it is desirable to lay down the regulatory technical standards adopted pursuant to those empowerments in a single Regulation.

⁷ OJ L 335, 17.12.2009, p. 1.

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- (10) This Regulation should be based on the new sectoral solvency regimes that have been established in the Union in order to ensure the most consistent conditions of application of the calculation methods. It should therefore not apply before the entry into application of Regulation (EU) No 575/2013 and should apply in full following the entry into application of both that Regulation and Directive 2009/138/EC. Existing national implementations of the calculation of supplementary capital adequacy requirements should therefore continue to be used in those areas that have not been harmonised by this Regulation in the period before it applies in full, and underlying calculations that are based on sectoral rules should be based on the sectoral rules that apply at the time of the calculation.
- (11) This Regulation is based on the draft regulatory technical standards submitted jointly by the European Supervisory Authority (European Banking Authority) (EBA), European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA) and European Supervisory Authority (European Security and Markets Authority) (ESMA) to the Commission.
- (12) The EBA, EIOPA and ESMA have conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits, in accordance with Article 10 of Regulation (EU) No 1093/2010, Article 10 of Regulation (EU) No 1094/2010 and Article 10 of Regulation (EU) No 1095/2010, and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010, Insurance Stakeholder Group and the Occupational Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 and Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010.

HAS ADOPTED THIS REGULATION:

TITLE I

Subject matter and definitions

Article 1

Subject matter

This Regulation specifies the conditions of application of the calculation methods listed in Annex I, Part II to Directive 2002/87/EC. These technical standards are laid down with regard to Article 6(2) of Directive 2002/87/EC, and for the purposes of Article 49 of Regulation (EU) No 575/2013 for the purposes of the alternatives to deduction referred to in paragraph 1 of that Article.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

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1. ‘insurance-led financial conglomerate’ means a financial conglomerate the most important sector of which is, in accordance with Article 3(2) of Directive 2002/87/EC, insurance;
 2. ‘banking- or investment-led financial conglomerate’ means a financial conglomerate the most important sector of which is either the banking sector or the investment services sector, in accordance with Article 3(2) of Directive 2002/87/EC.

TITLE II

Technical Principles

Article 3

Elimination of multiple gearing and the intra-group creation of own funds

Own funds which result directly or indirectly from intra-group transactions shall not be included when calculating the supplementary capital adequacy requirements at the level of a financial conglomerate.

Article 4

Transferability and availability of own funds

1. Own funds recognised at the level of a regulated entity, that exceed those needed to meet sectoral solvency requirements as specified in Article 9, shall not be included in the calculation of the own funds of a financial conglomerate, or of the sum of the own funds of each regulated and non-regulated financial sector entity in a financial conglomerate, unless there is no current or foreseen practical or legal impediment to the transfer of the funds between entities in the financial conglomerate.
2. The entity referred to in the fifth subparagraph of Article 6(2) of Directive 2002/87/EC shall, when submitting the results of the calculation referred to in that subparagraph and the relevant data for the calculation to the coordinator, confirm and provide evidence to the coordinator that the conditions set out in paragraph 1 are met.

Article 5

Sector specific own funds

1. Own funds specified in paragraph 2 which are available at the level of a regulated entity shall be eligible for the coverage of risks arising from the sector that recognises those own funds, and shall not be taken into account as eligible for the coverage of risks of the other financial sectors.
2. The own funds referred to in paragraph 1 are own funds that are none of the following:
 - a. Common Equity Tier 1, Additional Tier 1 or Tier 2 items within the meaning of Regulation (EU) No 575/2013;

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- b. basic own-fund items of undertakings subject to the requirements of Directive 2009/138/EC where those items are classified in Tier 1 or in Tier 2 within the meaning of Directive 2009/138/EC in accordance with paragraphs 1 and 2 of Article 94 of that Directive.

Article 6

Deficit of own funds at the financial conglomerate level

1. Where there is a deficit of own funds at the financial conglomerate level, only own funds items that are eligible under the sectoral rules for both the banking sector and the insurance sector shall be used to meet that deficit.
2. The own funds referred to in paragraph 1 are:
 - a. Common Equity Tier 1 capital within the meaning of Regulation (EU) 575/2013;
 - b. basic own-fund items where those items are classified in Tier 1 within the meaning of Directive 2009/138/EC and the inclusion of those items is not limited by the delegated acts adopted in accordance with Article 99 of that Directive;
 - c. elements that are classified as Additional Tier 1 capital in accordance with Regulation (EU) 575/2013 and as basic own-fund items where those items are classified in Tier 1 within the meaning of Directive 2009/138/EC in accordance with Article 94(1) of that Directive and the inclusion of those items is limited by the delegated acts adopted in accordance with Article 99 of that Directive;
 - d. elements that are classified as Tier 2 capital within the meaning of Regulation (EU) 575/2013 and as basic own-fund items where those items are classified in Tier 2 within the meaning of Directive 2009/138/EC in accordance with Article 94(2) of that Directive.
3. Own funds items that are used to meet the deficit shall comply with the conditions set out in Article 4(1).

Article 7

Consistency

The regulated entities or the mixed financial holding company in a financial conglomerate shall apply the calculation method in a consistent manner over time.

Article 8

Consolidation

In relation to insurance-led financial conglomerates, method 1 for calculating the solvency at the level of the group of insurance and reinsurance undertakings, as laid down in Articles 230 to 232 of Directive 2009/138/EC, shall be considered as equivalent to method 1 for calculating the supplementary capital adequacy requirements of the regulated entities in a

financial conglomerate, as laid down in Annex I to Directive 2002/87/EC, provided that the scope of group supervision under Title III of Directive 2009/138/EC is not materially different from the scope of supplementary supervision under Chapter II of Directive 2002/87/EC.

Article 9
Solvency requirement

For the purpose of the calculation of the supplementary capital adequacy requirements of the regulated entities in a financial conglomerate, a solvency requirement means:

1. where the rules for the insurance sector are to be applied, the Solvency Capital Requirement as defined by Articles 100 and 218 of Directive 2009/138/EC as applicable, including any capital add-on applied in accordance with Article 37 or Articles 37 and 232 of that Directive, taking into account Articles 216(4), 231(7), 233(6), 238 (2) and (3) of that Directive;
2. where the rules for the banking or investment services sector are to be applied, solvency requirements as laid down in Part Three, Title I, Chapter 1 of Regulation (EU) No 575/2013 and requirements pursuant to that Regulation or to Directive 2013/36/EU to hold own funds in excess of those requirements, including a requirement arising from the internal capital adequacy assessment process in Article 73 of that Directive, any requirement imposed by a competent authority pursuant to Article 104(1)(a) of that Directive, the combined buffer requirement as defined in Article 128(6) of that Directive, and measures adopted pursuant to Articles 458 or 459 of Regulation (EU) No 575/2013.

Article 10
The financial conglomerate's own funds and solvency requirements

1. Except where expressly stated otherwise in this Regulation, the financial conglomerate's own funds and solvency requirements shall be calculated in accordance with the definitions and limits established in the relevant sectoral rules.
2. The own funds of asset management companies shall be calculated in accordance with the requirements specified in Article 2(1) (l) of Directive 2009/65/EC. The solvency requirements of asset management companies shall be the requirements set out in Article 7(1) (a) of that Directive.
3. The own funds of alternative investment fund managers shall be calculated in accordance with the requirements specified in Article 4(1)(ad) of Directive 2011/61/EU. The solvency requirements of asset management companies shall be the requirements set out in Article 9 of that Directive.

Article 11
Treatment of cross sector holdings

1. Where an entity in a banking- or investment-led financial conglomerate has a holding in a financial sector entity which belongs to the insurance sector and which is deducted pursuant to Articles 14(4) or 15(4), no supplementary capital adequacy requirement shall arise in respect of that holding at the level of the financial conglomerate.
2. Where the application of paragraph 1 results in a direct change in the expected loss amount under the Internal Ratings Based approach within the meaning of Regulation (EU) No 575/2013, an amount equivalent to that change shall be added to the own funds of the financial conglomerate.

Article 12
Non-regulated financial sector entities

1. This Article specifies the calculation of the notional solvency requirement and notional own funds requirements for a non-regulated financial sector entity other than a mixed financial holding company.
2. Where a mixed financial holding company has a holding in the non-regulated financial sector entity, the notional own funds and the notional solvency requirements shall be calculated in accordance with the sectoral rules of the most important sector in the financial conglomerate.
3. For a non-regulated financial sector entity other than one referred to in paragraph 2, the notional own funds and the notional solvency requirements shall be calculated according to the sectoral rules of the closest financial sector of the non-regulated financial sector entity. The determination of the closest financial sector shall be based on the range of activities of the relevant entity and the extent to which it carries out those activities. If it is not possible to clearly identify the closest financial sector, the sectoral rules of the most important sector in the financial conglomerate shall be used.

Article 13
Sectoral transitional and grandfathering arrangements

The sectoral rules applied in the calculation of the supplementary capital adequacy requirements shall include any transitional or grandfathering provisions that apply at sectoral level.

TITLE III

Technical calculation methods

Article 14

Method 1 calculation criteria

1. This Article specifies method 1 of Annex I of Directive 2002/87/EC.
2. 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 under Directive 2002/87/EC and shall take into account the provisions set out in paragraph 6 where applicable.
3. For banking- or investment-led financial conglomerates the following treatments shall be applied to unconsolidated investments:
 - a. unconsolidated significant investments held in a financial sector entity, within the meaning of Article 43 of Regulation (EU) No 575/2013, which belongs to the insurance sector shall be fully deducted when calculating the own funds of the financial conglomerate;
 - b. other unconsolidated investments held in a financial sector entity which belongs to the insurance sector shall be treated in accordance with Article 46 of Regulation (EU) No 575/2013.
4. Subject to paragraph 3, any own funds issued by an entity in a financial conglomerate and held by another entity in that financial conglomerate shall be deducted if not already eliminated in the accounting consolidation process.
5. An undertaking which is a jointly controlled entity for the purpose of the relevant accounting framework shall be treated in accordance with sectoral rules on proportional consolidation or the inclusion of proportional shares.
6. In respect of an entity within the scope of Directive 2009/138/EC, which forms part of a financial conglomerate, the calculation of the supplementary capital adequacy requirements at the level of the financial conglomerate shall be based on the valuation of assets and liabilities calculated for the purposes of Directive 2009/138/EC.
7. Where asset or liability values are subject to prudential filters and deductions in accordance with Part 2, Title I of Regulation (EU) No 575/2013, the asset or liability values used for the purpose of the calculation of the supplementary capital adequacy requirements shall be those attributable to the relevant entities under that Regulation, excluding assets and liabilities attributable to other entities of the financial conglomerate.
8. Where calculation of a threshold or limit is required by sectoral rules, the threshold or limit at conglomerate level shall be calculated on the basis of the consolidated data of the financial conglomerate and after deductions required by this Regulation.
9. For the purposes of calculating thresholds or limits, regulated entities in a financial conglomerate which fall within the scope of an institution's consolidated situation pursuant to Regulation (EU) No 575/2013 shall be considered together.

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10. For the purpose of calculating thresholds or limits, regulated entities in a financial conglomerate which fall within the scope of group supervision according to Directive 2009/138/EC shall be considered together.
 11. For the purposes of calculating thresholds or limits at the regulated entity level, regulated entities in a financial conglomerate to which neither paragraph 9 nor paragraph 10 applies, shall calculate their respective thresholds and limits on an individual basis according to the sectoral rules of the regulated entity.
 12. When summing the relevant sectoral solvency requirements there shall be no adjustment other than as required by Article 11 or as caused by adjustments to sectoral thresholds and limits pursuant to paragraph 8.

Article 15
Method 2 Calculation criteria

1. This Article specifies method 2 of Annex I of Directive 2002/87/EC.
2. Where the own funds of a regulated entity is subject to a prudential filter pursuant to the relevant sectoral rules, one of the following treatments shall apply:
 - a. the filtered amount shall be added to the book value of participations in accordance with subparagraph 2 of Article 6 (4) of Directive, if the filtered amount increases regulatory capital;
 - b. the filtered amount shall be deducted from the book value of participations in accordance with subparagraph 2 of Article 6 (4) of Directive, if the filtered amount decreases regulatory capital.
3. For the purpose of paragraph 2, ‘filtered amount’ refers to the net amount that shall be taken into account in the calculation of own funds of the holding.
4. For banking- or investment-led financial conglomerates the following treatment shall be applied to significant investments in a financial sector entity, within the meaning of Article 43 of Regulation (EU) No 575/2013, which belongs to the insurance sector:
 - a. where the holding is not a participation the investment shall be fully deducted from the own funds items of the entity holding the instrument, in accordance with sectoral rules applicable to that entity;
 - b. where the holding is a participation the investment shall be treated according to method 2.
5. For insurance-led financial conglomerates, participations (as defined in Article 2(11) of Directive 2002/87/EC) shall be considered for the application of method 2 in accordance with this Article.
6. Intra-group investments in any capital instruments that are eligible as own funds in accordance with sectoral rules, taking into account relevant sectoral limits, shall be deducted or excluded from the own funds calculation.
7. The calculation of supplementary capital requirements shall be carried out in accordance with the formula in the Annex.

Article 16
Method 3 calculation criteria

1. This Article specifies method 3 of Annex I of Directive 2002/87/EC.
2. Competent authorities may only allow the application of method 3 if either:
 - a. it is not reasonably feasible to apply one of method 1 or method 2 to certain entities within a financial conglomerate, in particular because method 1 cannot be used for one or more entities because they are outside the scope of consolidation, or because a regulated entity is established in a third country and it is not possible to obtain sufficient information to apply one of the methods to that entity;
 - b. the entities which would apply one of the methods are collectively of negligible interest with respect to the objectives of supervision of regulated entities in a financial conglomerate.
3. One of method 1 or method 2 shall be used by all regulated entities in a financial conglomerate which are not referred to in the conditions in paragraph 2.
4. The application of method 3 allowed by a competent authority in relation to a financial conglomerate shall be consistent over time.

TITLE IV

Final provisions

Article 17

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from ...⁸ with the exception of Articles 5, 6(2), 8, 9(1), 14(6) and 14(10) which shall apply from the date application referred to in Article 309(1) of Directive 2009/138/EC.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission

The President

*[For the Commission
On behalf of the President*

[Position]

⁸ OJ: Please insert 1 January 2014 if publication occurs prior to 11 December 2013. Otherwise, insert the date twenty days following publication.

Annex - Calculation methodology for Method 2 – Deduction and aggregation method

The calculation of supplementary capital adequacy requirements under method 2 shall be carried out on the basis of the applicable accounting framework of each of the entities in the group following the formulaic expression below:

$$scar = \sum_{i=1}^{G_{fin}} x_i (OF_i) - \left(\sum_{i=1}^{G_{fin}} (REQ_i) + \sum_{j=1}^G (BV_j) \right)$$
$$scar \geq 0$$

where own funds (OF_i) exclude intra-group capital instruments that are eligible as own funds in accordance with sectoral rules.

The supplementary capital adequacy requirements ($scar$) shall thus be calculated as the difference between:

(1) the sum of the own funds (OF_i) of each regulated and non-regulated financial sector entity (i) in the financial conglomerate; the elements eligible are those which qualify in accordance with the relevant sectoral rules; and

(2) the sum of the solvency requirements (REQ_i) for each regulated and non-regulated financial sector entity (i) in the group (G); the solvency requirements shall be calculated in accordance with the relevant sectoral rules; and the book value (BV_j) of the participations in other entities (j) of the group.

In the case of non-regulated financial sector entities, a notional solvency requirement shall be calculated in accordance with Article 12. Own funds and solvency requirements shall be taken into account for their proportional share (x) as provided for in Article 6(4) of Directive 2002/87/EC and in accordance with Annex I to that Directive.

The difference shall not be negative.

4. Accompanying documents

4.1 Cost- Benefit Analysis / Impact Assessment

Introduction

According to CRDIV/CRR text, the EBA, EIOPA and ESMA (hereafter the ESAs) through the Joint Committee, shall develop draft regulatory technical standards with regard to the conditions of the application of the Article 6(2) of the Directive, and shall submit those draft regulatory technical standards to the Commission. The deadline for submission under the CRR is within one month that the CRR enters into force and the deadline under the CRD is within 5 months of application of Solvency II.

This Technical Standard focuses on harmonising the calculation of financial conglomerates' own funds. It describes how institutions following the consolidation methods set out in this Directive shall calculate own funds in the parent institution in a financial conglomerate. The standard introduces restrictions on which elements of own funds in subsidiaries and other participated entities of a financial conglomerate can be used in the calculation of own funds. The main rationale underpinning this Technical Standard is to avoid an overestimation of own funds held by cross-sector financial conglomerates.

Problem definition

A lesson learned from recent financial crises is that the regulation of supplementary supervision, in particular the current set of rules on determining own funds at the conglomerate level, deserves a thorough rethink. For example, in the recent past, it became clear that parent institutions could report strong levels of own funds even when a significant amount was actually locked-in in the subsidiaries, giving a misleading impression of a robust solvency.

Because of a lack of harmonisation of rules on conglomerate own funds, a large variety of practices was possible, which consequently rendered the Directive's assumption of availability of funds at the conglomerate level rather uncertain. In the cases where these practices leads to an overestimation of the capital available, this affects the ability of conglomerates' own funds to absorb losses and makes financial conglomerates more fragile than figures on own funds would suggest.

The ESAs have identified two main areas for which the lack of harmonisation may contribute to generating this type of issues:

- **Multiple gearing** - Uncertainties in the application of the methods for determining own funds at the conglomerate level may have led to undesirable levels of multiple gearing. This Technical Standard therefore builds upon the Directive and contributes to achieving its objective to eliminate the multiple use of elements eligible for the calculation of own funds at the level of the financial conglomerate (see for example Recital 7, Article 31 point 2, and Annex I, section I of the Directive).
- **Methods to determine Own funds at the Financial Conglomerate Level** - Uncertainties in the guidance about the choice of methods for determining own funds at the conglomerate level may have led to an arbitrary combination of the methods that are offered under Annex I of the Directive. This Technical Standard therefore provides additional clarity on the calculation methods for conglomerate own funds.

Objectives of the regulatory technical standard

The objective of this Technical Standard is to achieve a more consistent harmonisation of the calculation methods of Own Funds listed in Annex I of Directive. This should translate in increased efficiency and effectiveness of conglomerate supervision by competent authorities, more clarity on the

availability and transferability of own funds for the conglomerate, as well as tightly controlled levels of multiple gearing.

Options

There was not a wide selection of options available for this Technical Standard. Any choice made with respect to this Technical Standard derives from the text of the relevant Directives, predominantly the sectoral directives, CRR/CRD4 and Solvency II.

The guiding principles used by this Technical Standard to achieve more consistent harmonisation of calculation methods mentioned in Annex I of the Directive are:

1. to offer clarity in rules regarding transferability and availability of conglomerate own funds;
2. to eliminate multiple gearing and intra-group creation of own funds; and
3. to ensure the coverage of deficit at financial conglomerate level having regard to definition of cross-sector capital.

Annex I of the Directive, describes three methods to calculate a conglomerate's own funds. This Technical Standard concentrates on the application of these methods.

- **Method 1** - Method 1 is based on consolidated position of the conglomerate in order to avoid multiple gearing. For this purpose, the technical standard requires the elimination of all intra-group creation of own funds; the scope of the group is defined according to article 2, point 12 of the Directive. Adjustments are required to sectoral rules in the treatment of banking cross holdings and some instructions not included in the Directive are provided for unregulated entities. According to the Directive provisions, the capital requirements are calculated as sum of sectoral requirements without the elimination of intra-group transactions.
- **Method 2** - The description of this method in its current form is already quite prescriptive and unambiguous. However, this Technical Standard elaborates on two issues that may lead to disharmonised interpretations:
 - ▶ The proportional share applicable to own funds and solvency requirements;
 - ▶ The interpretation of the book value of participations in other entities of the group.

With respect to the latter issue, this Technical Standard uses the book value from the accounts of the parent as a starting point, but applies adjustments to any book values subjected to prudential filters in order to safeguard consistency in the calculation of this method's deduction of book value.

The method requires, according to the general principle of avoiding inappropriate creation of intra-group own funds, the deductions of all the intra-group investments in capital instruments eligible according to sectoral rules. This provision also ensures an equivalence between this method of calculation of the own funds and the others allowed according to the Directive.

- **Method 3** - The use of combination of methods 1 and 2 is limited only to the cases where the use of either method 1 or method 2 solely would not be appropriate due, for example, to the lack of information on specific entities within the group. The use of method 3 shall need the permission of the competent authorities or the coordinator after consultation of the relevant other competent authorities. The combination method 3 shall be applied in a consistent manner over time. The supervisory consent is needed in order to prevent regulatory arbitrage.

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- **Transition Period** – This draft RTS provide conglomerates with a transitional period during which the current sectoral requirements currently in place will apply. These transitional measures are driven by legal considerations related to the date of application of CRDIV/CRR and Solvency II. They clarify which set of rules conglomerates should use until the new regulatory frameworks for institutions and insurance undertakings on which this RTS is based become applicable.

Impacts

This technical standard's objective is to achieve a more consistent harmonization of the methods mentioned in Annex I of the Directive. This may limit the degree of freedom with respect to the ways of calculating own funds of conglomerates.

Both the ESAs and the industry believe that the conglomerates' business models may not be directly influenced by clarifications on calculation methods as provided by this technical standard. As FICOD and the calculation methods have been implemented for some time now, a certain number of conglomerates may already be following some of the recommendations provided in this document and have a limited number of adjustments to make.

Data Survey

The ESAs conducted a data survey to assess the qualitative impact of the technical standard. The ESA's received data from 12 conglomerates from 8 countries⁹ (out of the 57 conglomerates identified in the EU in July 2012). This sample is small and any conclusions drawn from this exercise may not be representative of the entire population. In addition, the insurance-led conglomerates are also underrepresented within the sample and for this reason; it had not been possible to draw any conclusions from this exercise for this type of conglomerate.

The ESAs are grateful for the conglomerates contributing to the survey as they add value to the policy making process. Furthermore, given the short timeframe, the ESA's thank the conglomerates participating in this survey for their efforts in submitting data on time.

The ESAs are aware that the assessment of the data relies on submissions based on a best effort basis, and that the data originates from conglomerates that apply current rulings, e.g. CRD II and Solvency I, and not their designated successors CRD IV and Solvency II. Further, given the significant changes that will arise from CRD IV and Solvency II, it has been difficult to estimate the incremental impact of this Technical Standard. Despite these caveats, the results from the analysis of the submitted data were discussed extensively.

The conclusion of the survey is that the bank-led conglomerates in the sample appear to show a limited impact of the technical standard. However, this conclusion should be taken with great caution and not generalised, given the sample composition and the limited sample size.

Qualitative assessment

- **Costs for Conglomerates**

- ▶ **Capital Compliance costs** - The expected impact compared to the sectoral rules for insurance-led conglomerate that apply method 1 of the Directive (where the scope of the insurance group under Solvency II is not the same as the financial conglomerate under the Directive (see Article 8), is due mainly to the line by line consolidation of the items of the

⁹ To render the submitting conglomerates anonymous, all relevant amounts were scaled back to a common own funds amount, that is, own funds before adjustments and deductions. Further, traces that could identify a submitting conglomerate were removed.

banking subsidiaries and banking joint controlled entities instead of the consolidation procedures provided under the Solvency 2 framework. It is expected that in the majority of the cases, the scope is the same or difference is not material, insurance-led conglomerate will apply Solvency 2 rules as they will be defined in the implementing measures for Solvency 2.

For banking-led and investment firm-led conglomerates, the main expected impact compared to the sectoral rules is due to the deduction of the insurance subsidiaries and joint controlled insurance entities that are risk weighted according to CRR.

Both insurance and banking group shall also adjust, where applicable, the amount of the threshold and parameters used for their eligibility limits (for example, thresholds on Deferred Tax Assets and on deduction of holdings under Article 48 of CRR), considering the effect of the deduction of cross sector holdings at conglomerate level.

Insurance, bank and investment firm-led conglomerates shall also take into account clarification of the limits to transferability and availability of own funds as foreseen in the Technical Standard.

- ▶ *Non capital compliance costs* – Conglomerates will have to update some of the processes they are currently using to calculate their own funds to align them with the requirements of this RTS. These costs are likely to be one-off and we do not expect them to be significant.

- ***Costs for National Supervisory Authorities***

National Supervisory Authorities may bear some costs related to the alignment of the national practices with the requirements of this Technical Standard. Such costs may arise if current national regulations need to be amended to comply with the Technical Standard. Costs may also arise in the cases where competent authorities are called upon to approve the use of Method 3 as it will require additional resources to examine the motives of the firms to use Method 3 and to give supervisory consent.

- ***Benefits of the technical standard***

There are a number of expected benefits related to this Technical Standard. They are:

- ▶ An increased standardization of the use of the methods, which could lead to lower costs of their application; and
- ▶ A more consistent approach in the selection and application of the methods of Annex I of the Directive, which will contribute to increase efficiency and effectiveness of conglomerate supervision; and
- ▶ More clarity on the amount, availability, and transferability of own funds within a financial conglomerate which will ensure the effective loss absorption of the capital held by conglomerates and contribute to greater financial stability.

4.2 Views of the Stakeholder Groups (SGs)

As per the ESAs Regulations, the ESAs sought the opinions of their respective Stakeholder Groups, the Banking Stakeholder Group, the Securities and Markets Stakeholder Group, the Insurance and Reinsurance Stakeholder Group and the Occupational Pension Stakeholder Group.

The European Banking Authority Banking Stakeholder Group (BSG) provided the below opinion.

It has to be noted that the numbering of the Articles was amended. References to specific Articles within the Feedback are references to the numbering of Articles of the Consultation Paper.

Art. 2 (Eligibility own fund items for insurance activities) states that capital instruments of insurance are defined as "capital instruments referred to as 'own funds' in Directive 2009/138/EC". This could be interpreted as actually excluding certain eligible items under Solvency II that are not explicitly included in the definition of "own funds" set out at Art. 87 of the Solvency II Directive. It would thus be advisable to refer to "eligible items to cover solvency requirements in Directive 2009/138/EC". However, Art. 10 which defines sector specific own funds mentions "own funds recognised under sectorial 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. This needs to be clarified.

Article 4 (transferability and availability of own funds): for all entities of a financial conglomerate, 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 II regulation). This is significantly different from the sectorial regulations that do not provide any timeframe requirements for transferability and goes far beyond the provisions of the Financial Conglomerates Directive which states, at Annex I, that "when calculating own funds at the level of the financial conglomerate, competent authorities shall take into account the effectiveness of the transferability of own funds". That requirement does not mean that capital should be liquid within a financial conglomerate. Moreover, this provision raises level playing field issues: between institutions that are financial conglomerates and those which are not due to discrepancies between transferability under the draft RTS and transferability under sectorial regulations and between financial conglomerates themselves, depending on their dominant activity, as different timeframes are provided for each sector. Finally, it is questionable whether a reallocation of capital within a financial conglomerate decided in an emergency situation would actually resolve a rapid and sudden deterioration in confidence due to liquidity issues. In any case, there are no reasons to provide different timeframes for insurers and bankers with respect to transferability and a 3 calendar day's timeframe is simply impossible to be implemented, from a practical standpoint, because of legal constraints imposed by company law. Should the ESAs decide to maintain a timeframe requirement in the RTS, 9 months should be required for both sectors.

Article 5 (cross sector own funds) provides that, when a shortfall of capital exists at group level, it should be covered by cross-sector own funds. Cross-sector own funds should fulfil 2 sets of criteria applicable to capital instruments (insurance and banking criteria). In most cases, it will not be possible to satisfy those conditions, given the more stringent definition of capital under the CRR and the existence of sector-specific criteria in the draft sectorial regulations (e.g. triggering events of write down or conversion of additional tier 1 instruments under the banking rules that would not correspond to the insurance sector). In addition, basic own-fund items for the insurance sector might be either undated or have an original maturity of at least 10 years. These could not qualify as Tier 1 instruments for the banking sector as they are not perpetual. It is the BSG view that Article 5 should:

- allow fulfilling only the original sector requirements (when the deficit of capital at group level is attributable to one sector) or,
- allow fulfilling the set of criteria applicable to the dominant sector or to the head of a group or,
- provide that only criteria equally defined in both sectors should be used to determine whether a capital instrument qualifies or not as a cross-sectorial instrument.

Art. 6 (2) and recital 12 (more stringent provisions applicable to banking-led financial conglomerates): in the case of banking-led conglomerates, the coordinating supervisor would have to choose the most prudent method between methods 1, 2 and 3. As this requirement applies to banking led financial

conglomerate only, it would also raise a level playing field issue and would lead to a significant change to the provisions in the CRD currently in force which states at Art. 59 "Method 1 (Accounting consolidation) shall only be applied if the competent authority is confident about the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation." The Art. 6(2) of the draft RTS may also imply that banking led financial conglomerates would have to calculate their financial conglomerate ratio under all methods in order to determine the most prudent one. As a consequence, in order to avoid ambiguity and any level playing field issue and to ensure consistency with the CRR, the BSG suggests clarifying this RTS by deleting recital 12 and replacing Art. 6(2) 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 scope 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 (buffer requirements): all capital buffers (systemic risk buffer, Pillar 2 buffers, contra-cyclical capital buffers etc.) in both sectors (insurance, banking) are taken into account in the calculation of financial conglomerate solvency requirements. In the banking sector, capital buffers are taken into account through an increase of the required solvency ratios but the RWAs remain calculated in reference to an 8% ratio, as stated at Art. 87 of the draft CRR. Moreover, the conservation and systemic buffers imply constraints on profits distribution but do not modify the capital requirements calculation itself. Thus, Article 8 is a major change in comparison to the draft sectorial regulations. However, Directive 2002/87/EC does not deal with capital buffers or with Pillar 2. The Joint Forum itself does not require a capital buffer at the financial conglomerate level which would be the sum of the banking and insurance activities' Pillar 2. Going one step further, 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 in the same way to capital buffers. Therefore, any mentioning 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.

The solvency requirement for banks is defined by Art. 87 (1) of the draft CRR as the following own funds requirements:

- a Common Equity Tier 1 capital ratio of 4.5%
- a Tier 1 capital ratio of 6%
- 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.

For its part, Annex I to the Directive states that:

Annex I - Technical principles (I.2): [...] 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, 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):

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.

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, Annex I to the Directive does not 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". To avoid any ambiguity, this principle should appear in Article 14 (Technical calculation methods) of the RTS, at its very beginning, and also in its Executive Summary (see: Technical calculation methods).

Article 46 (3b) 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 and capital buffers in the solvency requirements) as it would basically amount to making Pillar 2 notions public, which is strictly prohibited by law. An alternative way that would be consistent both with the CRR and the Solvency II directive would involve in consistency with CRR if confirmed, disclosing a coverage ratio calculated as total capital at group level in accordance with this RTS, divided by the sum of minimum requirements provided in sectorial regulations, taken into account adjustments required by the RTS, but which would need to take into account the other comments of this document. Should a coverage ratio be required under art 46 of the CRR, it would be advisable to clarify how it should be calculated using method 2.

Article 14 (8) and related explanations state that for the insurance parts of the conglomerate, the valuation of assets and liabilities according to Solvency II shall be applied in the calculation of Method 1. This ensures consistency between the conglomerate's regulatory capital calculation and the insurance regulatory capital calculations. On the other hand, the corresponding explanations determine that the accounting consolidated accounts shall be the basis for the calculation of own funds at the conglomerate level. It is thus unclear, whether a reconciliation of the Solvency II basic own funds to insurance group's contribution to own funds of the consolidated balance sheet value of own funds will be necessary or not. In the latter case, for banking led conglomerates if accounting consolidation is a requirement, taking into account valuation of assets and liabilities according to Solvency II, the RTS would lead to an additional burden for banking-led financial conglomerates, in contrast to insurance led conglomerates which could use the scope of consolidation of Solvency II according to Article 7. It is the BSG's view that the text of the RTS should be clarified on this subject.

Article 17 (enter into force) states that "This regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union." On page 13, point 17 states that "It is necessary that the new regime for treatment of methods of consolidation enters into force the soonest possible following the entry into force of the CRR/CRD IV and Solvency II". It is the suggestion from the BSG that article 17 should be completed by the following sentence "Until CRR/CRD IV and Solvency II have both entered into force, financial conglomerates have to comply with the national transpositions of Directives 2002/87/EC and 2011/89/EU".

4.3 Feedback on the public consultation and on the opinion of the Stakeholder Groups

The ESAs publicly consulted on the draft RTS contained in this paper. The consultation period lasted for six weeks and ended on 5 October 2012. 10 responses were received, all of which were published on the websites of the EBA, the EIOPA and the ESMA.

This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them, where deemed necessary.

In many cases several industry bodies made similar comments or the same body repeated its comments in the response to different questions. In such cases, the comments, and EBA analysis are included in the section of this paper where EBA considers them most appropriate.

Changes to the RTS have been incorporated as a result of the responses received during the public consultation.

It has to be noted that the numbering of the Articles was amended. References to specific Articles within the Feedback are references to the numbering of Articles of the Consultation Paper.

Summary of key issues and the EBA's response

Mandated in Article 49 of the CRR and Article 150 of the CRD, the ESAs developed the draft Regulatory Technical Standards (RTS) for the calculation Methods under Article 6.2 of the Financial Conglomerates Directive (FICOD). These RTS will be part of the Single rulebook aimed at enhancing regulatory harmonisation in the European Union.

The proposed draft RTS set out specifications for institutions in a financial conglomerate to ensure uniform conditions of application of the calculation Methods for determining the amount of capital required at the level of the financial conglomerate.

Respondents generally welcomed the approach taken by the ESA. Further many respondents raised concerns with regard to:

Article 4 -The assessment of transferability and availability, and whether there should be differential treatment between the sectors. The ESAs acknowledge stakeholders concerns on the practical issues and impediments in relation to transferability and availability of funds, the ESAs view that the financial conglomerate shall raise such issues during their discussions with the coordinator. Moreover the ESAs note that the differences in time periods contained at sectoral rules, and view that whilst these need to be respected at the FICOD level, they have removed reference to them within this RTS. Further the ESAs view that in accordance with Annex I of the Directive the own funds need effectively to be both transferable and available, in order to be included in the own funds calculation at the level of the financial conglomerate. The ESAs have clarified this such that it is the coordinator to whom the 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.

Article 6 – most prudent method: Respondents were concerned on the differential treatment for bank led versus other financial conglomerates, and also questioned whether the RTS should propose the most prudent method being selected. The ESAs note all the comments and accordingly propose

deleting the paragraph requiring the most prudent method for banking led financial conglomerates in order not to create an unlevel playing field. Further the ESAs note that the choice of the method is determined as per Annex I of the Directive, namely by the coordinator, after consultation with the other relevant competent authorities and the conglomerate itself.

Article 8 and whether to include Pillar 2 and capital buffers in the solvency requirement: Some respondents noted that the Directive does not explicitly cite buffer requirements, capital add-ons or any other specific capital requirements when calculating supplementary capital adequacy requirements. The respondents suggested that the solvency requirements should correspond to the sectoral rules which only include the minimum capital requirements, and hence proposed removing references to Pillar 2 and any buffer requirements from this article. The ESAs note the comments, and also that the final CRDIV/CRR text contains further details on capital requirements than the draft CRDIV/CRR proposal. Accordingly the ESAs propose that when having regard to the banking or investment services sector, both the ICAAP requirement, of Pillar 2, which requires institutions to maintain on an ongoing basis amounts, types and distribution of internal capital considered adequate to cover the nature and level of risks under CRDIV, and the combined buffer requirement, under CRDIV should be taken into account. The ESAs note that when having regard to the insurance sector, under Solvency II, the ORSA of Pillar 2 is not a capital requirement, and does not need to be taken into account.

Lack of harmonised definition of own funds and solvency requirements between the sectors. The ESAs share the stakeholders concern on the absence of harmonised capital terms or reconciliation rules between own funds categories at the sectoral level. Further such harmonisation is not within the ESAs' mandate of this RTS. The ESAs invite the EU Commission to consider this.

Timing and RTS application date: In light of the fact that the CRRIV/CRR was not yet finalised at the time of the consultation, respondents regard the application of the specifications for the calculation Methods requirement from January 2013 (the date contained in the CRDIV/CRR text proposal) as very challenging if not impossible. Many respondents also questioned the timing noting that Solvency II is not due to come into force until 2014 at the earliest. Some respondents suggested either to postpone the application of the requirement until January 2014 or until the EC has completed its review of the Directive. The ESAs understand that the short timeline for the implementation may represent a challenge. However, both the timing and the scope of application are determined in the CRR/CRDIV and it is not in the ESAs remit to adjust them. However, the ESAs have proposed that should Solvency II not be applied at the following the entry into application of CRDIV/CRR, then several articles of this RTS should not apply in the interim period until Solvency II is applied, and that the underlying calculations for insurance sectoral rules be based on national implementation of the existing solvency regime, at the time of the calculation.

An account of the detailed comments received and the ESAs' responses to them is provided in the feedback table below.

Summary of responses to the consultation and the ESAs' analysis

Topic	Summary of responses received	ESAs' analysis	Amendments to the proposals
<p>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,</p>	<p>One respondent [Banca Carige] noted that Method 1 is similar to its existing domestic (Italian) treatment and so is simpler to implement. Whereas the cost implications of Method 2 and also Method 3) are quite big because in that case it is necessary to distinguish between the intra-group accounts.</p> <p style="text-align: center;">****</p> <p>Some respondents [FBF and EACB] noted high implementation costs. The distinction between cross sectoral and specific sectoral own funds will require financial conglomerates to analyse all non intra group capital instruments issues by all legal entities, taking into account both Solvency II and CRD eligibility criteria. Compliance with both sets of criteria combined with more stringent criteria at the financial conglomerate level would inevitably increase the cost of capital for financial conglomerates, relative to capital issues by institutions. Also this would lead to a very high cost in terms of financial and human resources. Increased cost of compliance with the onus on financial conglomerates to verify the absence of any practical, legal, regulatory, contractual or</p>	<p>According to the FICOD a Coordinator may choose which Method to apply, but the financial conglomerate needs to be mindful to the cost implications due to the requirements under the FICOD, and the rules at the sectoral level.</p> <p style="text-align: center;">****</p> <p>The ESAs note the cost implementations of the sectoral directives. However, the financial conglomerate needs to be mindful to the cost implications due to the requirements under the relevant rules.</p>	<p>No change.</p> <p>No change.</p>

<p>relative to following the Directive in the absence of the Regulatory Technical Standards.</p>	<p>statutory impediments, especially for a Banking Led financial conglomerate. ****</p> <p>Some respondents [FBF, EACB] viewed that compared with insurance led conglomerates; banking led conglomerates will be differently affected in particular because of the requirement of immediate transferability. Also requiring from banking led financial conglomerates to fulfil the conditions of Article 6(2) of RTS (see general comments - <i>specific requirements for banking led financial conglomerates</i>). ****</p> <p>(EACB, FFI) The requirement to including sectorial buffer requirements into solvency requirements will be the largest cost and will lead to the elimination of most possibilities for capital planning between sectors inside the financial conglomerate. ****</p> <p>Many respondents expressed the difficulty of producing an assessment of the impact.</p>	<p>****</p> <p>Please refer to ESAs' response to Article 4 and 6.</p> <p>****</p> <p>Please refer to ESAs' response to Article 8</p> <p>****</p> <p>The ESAs are aware of the difficulty of producing an assessment of the impact. This issue is addressed in the Impact Assessment section.</p>	
<p>Q2. How, in your opinion would the proposed clarifications impact on conglomerates' business models?</p>	<p>One respondent [GDV] did not view that conglomerates' business models are directly influenced by clarifications on calculation Methods as provided by the ESAs. These Methods just provide the technical means to measure the group-wide regulatory capital. ****</p> <p>One respondent [Banca Carige] viewed that the implementation of the new rules will have no important impact on our conglomerate</p>	<p>The ESAs note the point made.</p> <p>****</p> <p>The ESAs note the point made.</p>	<p>No change.</p> <p>****</p> <p>No change.</p>

	<p>business model.</p> <p style="text-align: center;">****</p> <p>One respondent [GVD] viewed advisable to wait for the full implementation of Solvency II and CRD IV before the FICOD is substantially reviewed.</p> <p style="text-align: center;">****</p> <p>One respondent [FBF] underlines that the definition of transferability is more stringent than in sectoral rules. Thus an institution would be subject to higher restrictions on capital eligibility if it is qualified as a financial conglomerate or not.</p> <p style="text-align: center;">****</p> <p>For one respondent, their insurance activities allow them to significantly enlarge the range of products offered to retail customers, through a common distribution channel. With this draft RTS, the incentives for so doing are now limiting and require banking led financial conglomerates to consider the following options:</p> <ul style="list-style-type: none"> - focus on their dominant activities, hence reducing their diversification benefits inherent to their current risk profile -reduce share of capital in their subsidiaries belonging to their secondary sector (i.e. insurance), possibly by increasing complexity of governance arrangements. - pass the increase in costs on to their customers, at least partly <p style="text-align: center;">****</p>	<p style="text-align: center;">****</p> <p>The ESAs note the comment, however it is beyond the ESAs mandate to wait until the EC's completed its FICOD review before submitting the draft RTS.</p> <p style="text-align: center;">****</p> <p>The ESAs note the comment; however the transferability rules are contained in the FICOD and apply to the supplementary supervision level.</p> <p style="text-align: center;">****</p> <p>The ESAs note the comment. FICOD is a supplementary Directive, and as such insurance entities will be subject to the costs of both the FICOD and the underlying sectoral directives. The ESAs have made some changes to Articles 4 and 8 – See below.</p> <p style="text-align: center;">****</p>	<p style="text-align: center;">****</p> <p>Please refer to ESAs' response to Article 17, and also Recital 14.</p> <p style="text-align: center;">****</p> <p>Please refer to ESAs' response to Article 4.</p> <p style="text-align: center;">****</p> <p>Please refer to ESAs' response to the Articles 4 and 8.</p> <p style="text-align: center;">****</p>
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	<p>One respondent [EACB] viewed that having differentiated conditions depending on the sector might lead to reorienting activities of some groups to avoiding offerings of diversified products in banking and insurance sector at the same time.</p> <p>- Requirements for cross sector capital instruments to fulfill two set of criteria – qualify as own funds under banking and insurance rules could also lead to avoiding offerings of diversified products in banking and insurance sector by focusing on relevant activities or reduce share of capital in subsidiaries belonging to the secondary sector.</p> <p style="text-align: center;">****</p> <p>One respondent [EACB] viewed that large impact were the buffers to be included as it would provide the wrong view of the loss absorption capabilities of a financial conglomerate. Further, the conservation, counter-cyclical and systemic buffers also imply constraints on profit distribution but do not modify the capital requirements calculation.</p>	<p>The ESAs note the comment. FICOD is a supplementary Directive, and as such insurance entities will be subject to the costs of both the FICOD and the underlying sectoral directives. The ESAs have made some changes to Articles 4 and 8 – See below.</p> <p style="text-align: center;">****</p> <p>The ESAs have amended Article 8.</p>	<p>Please refer to ESAs' response to the Articles 4 and 8.</p> <p style="text-align: center;">****</p> <p>Please refer to ESAs' response to Article 8.</p>
<p>Q3. How far would the suggested clarifications change current market practices?</p>	<p>One respondent [GDV] viewed that much of the changes were due to the impact of Solvency II and CRD IV. Further, there is, and will be, a fair amount of interaction between the sectoral frameworks which is a particular issue for financial conglomerates. The reciprocal effects between the different frameworks need to be carefully investigated in order to determine whether further alignment is necessary.</p> <p style="text-align: center;">****</p> <p>Another respondent [EACB] questioned why</p>	<p>The ESAs note the impact from the significant changes to the underlying sectoral rules.</p> <p style="text-align: center;">****</p>	<p>No change</p>

	<p>there were differentiating conditions (cf. article 4, article 6, article 8) depending on the sector might lead to re-orientating activities of some groups to avoiding offerings of diversified products in banking and insurance sector at the same time</p> <p style="text-align: center;">****</p> <p>For two respondents [FBF, EACB] requirements for cross sectoral capital instruments to fulfill two sets of criteria could also lead to avoiding offerings of diversified products in banking and insurance sector by focusing on relevant activities or reduce share of capital in subsidiaries belonging to the secondary sector.</p>	<p>See the ESAs' responses to Articles 4, 6 and 8.</p> <p style="text-align: center;">****</p> <p>The ESAs note the comments, but point out that FICOD is supplementary to sectoral regime.</p>	
<p>Q4. Are the Technical Principles in Title II sufficiently clear? If not, what areas require further clarification?</p>	<p>Most of the stakeholders comments to this question have been incorporated below in the respective Articles of the draft RTS</p> <p style="text-align: center;">****</p> <p>One respondent [GDV] commented that the RTS provides additional clarity to Annex I of FICOD, and welcomed that Method 1 of FICOD is deemed to be equivalent for insurance-led financial conglomerates under Article 7 of the draft RTS. However, it needs to be clarified that equivalence applies not only to insurance-led conglomerates and irrespective of whether the scope of the group is similar with the scope according to FICOD.</p> <p style="text-align: center;">****</p> <p>One respondent [FFI] sought that the relationship between Articles 4 and 10 should be further clarified.</p> <p>What could sector specific own funds (other than CET1, AT1 or Tier 2) be under CRR?</p>	<p style="text-align: center;">****</p> <p>Please refer to ESAs' response to Article 7</p> <p style="text-align: center;">****</p> <p>Please refer to ESAs' response to Article 10. Further, Article 4 does not specify the capital elements eligible on financial conglomerate level but defines the transferability and availability</p>	

	<p>Also asked whether AT1 and Tier 2 funds also considered transferable. Article 8 refers to CRR own funds requirements and CRD IV combined buffer requirements or capital add-ons. Are the CRD IV combined buffer requirements to be covered with total own funds as defined in CRR Part II since the financial conglomerate directive does not recognize different Tier-levels? If CRDIV combined buffers are to be covered only with banking sector's CET1 own funds, further clarification is needed on how to determine transferable own funds from the banking sector.</p> <p style="text-align: center;">****</p> <p>Another stakeholder [FBF] viewed :</p> <ul style="list-style-type: none"> - Article 11, treatment of cross sector holdings is not fully in line with the explanatory note. - inconsistency issues with Articles 14(3) and 14(4). - Eligible capital instruments under Solvency II. - Differences between Article 2 and Article 10. - Level playing field issues between the sectors in: Article 4 vis a vis that proposals of transferability in due course. - More stringent requirements imposed on banking led financial conglomerates in Article 6(2). - Difficulties in relation to cross sectoral Own Funds – Article 5, given the more stringent definition of capital under the 	<p>requirements that have to be fulfilled in order to consider own funds elements on financial conglomerate level irrespective of the Tier.</p> <p style="text-align: center;">****</p> <p>See ESAs comments on Article 2, 4, 5, 6, 10 and 11.</p>	
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	<p>CRR, and the existence of sector specific criteria in the draft sectoral regulations.</p> <p>****</p> <p>Another respondent [EACB] suggested that</p> <ul style="list-style-type: none"> - Article 2 should contain a reference to: all eligible items in sectorial own funds to cover capital requirements. In this way some items from insurance sector should not be excluded by the unclear wording (e.g. surplus funds). - Article 5 on <i>Cross sector funds</i> should be modified to avoid excessive double requirement for funds that can be transferred across sectors and also to avoid imposing criteria not applicable to both sectors - Article 7 is rather controversial. It implies that consolidation may be done according to Solvency II for an insurance-led financial conglomerate. Explanatory text states that according to Solvency II multiple use of own funds and intra-group creation of capital should be eliminated. The same basic principles also apply for CRR consolidation. However, Method 1 under Solvency II is valuation based while Method I under the RTS is accounting based. Article 7 should be deleted as it does not give any guidelines to what end the Solvency II consolidation would be used for, but rather raises potential level playing field issues. <p>*****</p> <p>The restrictions introduced by Article 10 on <i>Sector specific own funds</i> eligible to cover the</p>	<p>****</p> <p>See ESAs comments to Articles 2, 5 and 7</p> <p>****</p> <p>The comment is dealt with under Article</p>	
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	<p>financial conglomerate solvency requirements are radically different from FICOD. The relationship between Articles 4 and 10 of the RTS could be further clarified. What could sector specific own funds other than CET1, AT1 or Tier2 under CRR? Are AT1 and Tier2 funds also considered transferable? Generally, further clarification is needed on how to determine transferable own funds from the banking sector.</p> <p>- Regarding treatment of insurance holdings in a bank led conglomerate (Article 11) it should be clarified that in addition to capital charge relating to insurance investment, also the possible expected loss from the insurance investment should not be applied at conglomerate level. Clarification is necessary, since expected loss resulting from IRBA is not a capital charge, but a deduction item and as such is out of scope of Article 11 in its present form.</p>	<p>10. Article 4 does not specify the capital elements eligible on financial conglomerate level but defines the transferability and availability requirements that have to be fulfilled in order to consider own funds elements on financial conglomerate level irrespective of the Tier.</p> <p>The transferability of AT1 and Tier 2 funds would have to be assessed on the basis of the criteria laid down in Article 4.</p>	
Q5. Are there any areas of ambiguity in the way that the Technical Principles in Title II apply to the three consolidation Methods?	It was commented that Article 10 differs from text in FICOD, and a minor change was proposed to the explanatory note	The ESAs noted the stakeholders comments and amended the Article 10	See Article 10 amendment below
Q6. Are there any areas of ambiguity in the way that Method 1	<p>SCOPE OF CONSOLIDATION</p> <p>One respondent [FBF] proposes that supplementary supervision should be aligned with the accounting consolidation perimeter</p>	The ESAs note that Annex 1 of the FICOD requires that the calculation of the supplementary capital adequacy requirements of the regulated entities in	Article 14 (1) has been integrated to specify that valuation criteria according to Solvency II, to be applied to

<p>needs to be carried out?</p>	<p>and proposes amending Article 14 (1) by deleting “applied to the scope of supplementary supervision of the Directive”. Another respondent [EACB] believes that supplementary supervision should be aligned with the accounting consolidation perimeter, since new accounting standards IFRS 10 would lead to the inclusion of all material risks borne by the conglomerates.</p> <p style="text-align: center;">****</p> <p>SOLVENCY 2 VALUATION CRITERIA FBF observe that, according to art 14 (8), the valuation rules applicable to the insurance entities in the conglomerate are different from the valuation rules used for accounting purpose EACB observes that Article 14 (8) and related explanations state that for the insurance parts of the conglomerate, the valuation of assets and liabilities according to Solvency II shall be applied in the calculation of Method 1. This ensures consistency between the conglomerate's own fund calculation and the sector-specific own fund calculations. On the other hand, the corresponding explanations determine that the consolidated accounts shall be the basis for the calculation of own funds at the conglomerate level. It is thus unclear, whether a reconciliation of the Solvency II basic own funds to insurance group's contribution to own funds of the consolidated balance sheet value of own funds is necessary or not. The text of the RTS remains unclear on this subject. One respondent [GBIC] asks if Solvency II</p>	<p>a financial conglomerate shall be carried out on the basis of the consolidated accounts. Further the ESAs view that Article 14 requires that supplementary supervision is based mainly on accounting consolidation perimeter, with two exceptions: the first has effect on the scope of consolidation while the second has effect on the valuation rules:</p> <ol style="list-style-type: none"> 1) the accounting consolidation is applied to the scope of supplementary supervision of the Directive, in order to avoid the accounting consolidation of the subsidiaries involved in industrial activities; 2) The assets and liabilities belonging to the insurance entities within the conglomerate are measured (as specified in art. 14(8)) according to the Solvency II valuation criteria, in order to be compliant with sectoral regulations and valuation criteria. 	<p>the assets and liabilities belonging to the insurance entities, is a waiver to the general framework of accounting consolidation.</p> <p>Revised text for Article 14 (1)</p> <p>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, and taking into account the provisions set out in Article 14(8).</p>
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	<p>valuation criteria are eligible, at the level of conglomerate, under method 1 of calculation, departing from the accounting criteria.</p> <p style="text-align: center;">****</p> <p>CONSISTENCY OF OWN FUNDS AND SOLVENCY REQUIREMENTS CALCULATIONS</p> <p>One respondent [EACB] proposes that as the own funds are calculated on a consolidated basis, also the solvency requirement should be calculated on a financial conglomerate consolidated basis as well. However, appropriate guidance on this topic is not given.</p>	<p style="text-align: center;">****</p> <p>Please refer to ESAs' response to Article 14</p>	<p style="text-align: center;">****</p>
<p>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?</p>	<p>One respondent [EACB] sees no alternative if and "consolidated accounts" means using the consolidated solvency overview for the insurance group and the consolidated view according to the German Banking Act for the Banking Group.</p> <p>Another respondent [FFI] noted that in case the consolidated accounts are used as a starting point, operational burden is not substantial. The draft uses both the term "consolidated data" and term "consolidated accounts". These terms should be clarified, and the rationale of using different terms explained.</p> <p>Another respondent [FBF] noted that use of Accounting consolidation accounts is the more straightforward Method to eliminate the intra</p>	<p>Please refer to the ESAs' analysis on Solvency II measurement criteria in the ESAs' response to Article 14</p>	

	<p>group creation of own funds for Method 1.</p> <p>Another respondent [EACB] noted that the highest operational burden for banking led conglomerates would be as a result of the need to provide an accounting consolidation of the insurance part that would require a reconciliation process. This raises level playing field issues as compared with the insurance led conglomerates which use the Solvency II consolidation scope for the entire group. Consolidation is the more straightforward Method to eliminate the intra-group creation of own funds.</p>		
<p>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?</p>	<p>One respondent [GDV] viewed that against the background of diverging valuation principles under CRD IV and Solvency II, a true consolidation is not possible. However, they shared the ESAs view that a one line item consolidation is possible and should be regarded as Method 1.</p> <p>Another respondent [GBIC] noted that there currently is still absence of harmonised capital terms or reconciliation rules between own funds categories at the Sectoral level. Further need final text of CRDIV/CRR and Solvency II including its Level 2 provisions.</p> <p>One respondent [FBF] saw no problem to applying sectoral rules under Method 1</p> <p>Whereas another respondent [EACB] viewed that this needs to be further analyzed on the</p>	<p>The ESAs share the stakeholders concern on the absence of harmonized capital terms or reconciliation rules between own funds categories at the Sectoral level. Further such harmonisation is not for this supplementary Directive, and not within the ESAs' mandate of this RTS. The ESAs welcome the EC to consider this.</p>	<p>No change</p>

	<p>basis of the final Articles of CRD IV / CRR I and Solvency II (including Level 2 text). Currently views that there are still no harmonized capital terms or transfer arrangements between the defined sectorial equity categories. Moreover, after the CRD IV – CRR I final texts come into force we do not foresee any additional harmonization of the capital terms. Starting the calculation from consolidated accounts might pose significant difficulties. They propose allowing the treatment suggested in the answer to question 6.</p>		
<p>Q9. Are there any areas of ambiguity in the way that Method 2 needs to be carried out?</p>	<p>Several respondents [FBF and EACB] do not support the inclusion of capital buffers in solvency requirements, given they 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. Method 2 may need further clarifications, following the quantitative impact survey currently in progress.</p> <p>Applying Method 2 would result in a fundamental change of the current consolidated principles and tools, including for the accounting aspects. Moreover, the manual elimination of all intra group transactions would be, in particular, burdensome. These manual operations would present a risk in term of reliability as well. Method 2 should not be demanded in case Method 1 can be currently applied.</p>	<p>The ESAs note the stakeholders' comments.</p> <p>The ESAs note the comments on buffers.</p> <p>The ESAs have proposed amendments to Article 8 – see below; furthermore, the application of Method 2, in that it may be seen as burdensome, is the result of the sectoral rules.</p>	<p>See amendments to Article 8</p>

<p>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?</p>	<p>All of respondents to question 10 [FBF, FFI, GBIC, GDV, EABC, Banca Carige] as well as other respondents to Article 4 [EBF, Insurance Europe, Millennium bcp, BSG] viewed that the timeframe of three calendar days for the purpose of assessing the transferability of funds to entities subject to CRR as not sufficient.</p> <p>Further one respondent [GDV] questioned the consistency for the proposal for transferability and availability between sectors. The timeframes chosen to prove the transferability in a stress scenario seem to be arbitrary and hard to verify. Further the determination of cross-sector own funds elements, as set out in Article 5 of the draft RTS refers to the classification of own funds according to Article 93 of Solvency II which already includes aspects of availability.</p> <p>Several respondents [See GBIC, FFI, FBF and EACB] disagreed with the differences in the time period set for banking and non banking activities. Moreover they suggested the need to distinguish better between transferability of liquidity items and own fund items. For the latter, restrictions on the transferability laid down in the general company law should be taken into account.</p>	<p>The ESAs note the comments.</p> <p>Please refer to ESAs comments to Article 4.</p>	
<p>IV. Draft Regulatory Technical Standards</p>			
<p>General Comment</p>	<p>One respondent [GDV] fully supports the aim to provide for convergence in applying the calculation Methods set out in Annex I of</p>	<p>The ESAs note the comment.</p>	

	<p>FICOD. They welcome that insurers can calculate their capital under Solvency II equivalent to the consolidation calculation method under FICOD. This is a very important clarification which ensures that there is no further burden for insurers to comply with the FICOD as regards the consolidation method.</p> <p>****</p> <p>On the other hand, this respondent [GDV] believes the discussion on the RTS is premature and makes very limited sense in anticipation of the finalized legislative texts.</p> <p>****</p> <p>Another respondent [GBIC] added that some articles (5 and 10) which go beyond the ESAs mandate must be seen as a preemption of the forthcoming amendment of the FICOD.</p> <p>****</p> <p>There are still some inconsistencies between the sectoral regulatory approaches which need further alignment. This is especially true with the different definition and treatment of cross-sector capital.</p> <p>****</p> <p>They [GVD] have severe concerns with the requirements on transferability and availability of own funds. These requirements are excessive and disregard the treatment of the conglomerate as one economic unit.</p> <p>One respondent [GBIC] asks for a renewed consultation of this document once the final sector specific rules have been established.</p> <p>This is the only way for arriving at a meaningful and feasible set of methods for</p>	<p>****</p> <p>The ESAs note this comment, but they are mandated to submit the draft RTS as elaborated by the CRR/CRDIV. Further, please note the date of entry of the RTS in Article 17.</p> <p>****</p> <p>The ESAs refer to the answers to questions on Articles 5 and 10.</p> <p>****</p> <p>The ESAs acknowledge this point, however also recognise that their mandate for this RTS does not cover aligning sectoral regulatory approaches.</p> <p>****</p> <p>The ESAs refer to answers given in response to questions about Articles 4 and 8.</p>	
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	<p>calculating solvency within financial conglomerates. ****</p> <p>One stakeholder [Banca Carrige] thinks that Method 1 approach is better because it's more consistent with the accounting standards and shows less cost implications.</p> <p>****</p> <p>One stakeholder [Insurance Europe] notes that all references made to Solvency II in the draft RTS are redundant for insurance-led conglomerates. Solvency II already incorporates many cross sectorial aspects whereby group supervision and reporting requirements extend to other financial sectors and non-financial sectors within the group. Therefore this RTS should not repeat or deviate from these rules.</p> <p>****</p> <p>Further focus should be on a consistent treatment between banks and insurers, to remove the existing competitive distortion between insurers inside a bank-led conglomerate and other insurers. The RTS should aim to ensure consistency and to fill in any gaps that could result from CRD IV and Solvency II at the level of financial conglomerate.</p> <p>****</p> <p>Finally some note that the structure is extremely confusing, with several cross-references made to different sectorial legislations. We believe that it is for the review</p>	<p>****</p> <p>The ESAs note this point, however, according to the FICOD a Coordinator may choose which Method to apply.</p> <p>****</p> <p>The ESAs note this point, but the ESAs mandate covers the supplementary FICOD and not the underlying sectoral Directives. Further this RTS has been drafted without prejudice to sectoral legislation.</p> <p>****</p> <p>The ESAs note these points, but amendments to sectoral directives go beyond the scope of the mandate for this RTS.</p> <p>****</p> <p>The ESAs note these points, however, the RTS has been drafted without prejudice to the sectoral legislation.</p>	
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	<p>of the FICOD or an associated RTS to make clearer the references to sectoral legislation, and not for this RTS.</p> <p style="text-align: center;">****</p> <p>One stakeholder [GBIC] supports the aim of the RTS although view the proposal has gone beyond its mandate as you cannot modify the definitions of non sector specific and sector specific own funds.</p> <p style="text-align: center;">****</p> <p>Some seek that the RTS and the CRR clarifies treatment of the deduction of insurance interests.</p> <p style="text-align: center;">****</p> <p>Some have concerns on the impact of inconsistent legislative sectoral treatment of risks; and inconsistent treatment of waiver for capital deductions at sectoral and financial conglomerate level; and on overlapping consolidation scopes in respect of sub subsidiaries, and propose FICOD should stipulate waivers in this regard</p> <p style="text-align: center;">****</p> <p>One respondent [FFI] views that the buffer requirements or capital add-ons into sectorial solvency requirement are not in line with conglomerate solvency principles. This method would result in a drastic drop in the solvency at the conglomerate level and would give a misleading picture of the loss absorption capacity of a conglomerate.</p>	<p style="text-align: center;">****</p> <p>The ESAs note this point, however, the RTS has been amended, in such a way that it respects its mandate.</p> <p style="text-align: center;">****</p> <p>The ESAs note that Article 46 of the CRR covers this issue. Further the ESAs view the treatment of holdings is sufficiently clear in this RTS.</p> <p style="text-align: center;">****</p> <p>The ESAs note this point, and view that addressing this point goes beyond the mandate of this RTS.</p> <p style="text-align: center;">****</p> <p>The ESAs refer to the amended Articles, such as, for example, Article 8.</p>	<p style="text-align: center;">****</p> <p>See revised Article 10</p> <p style="text-align: center;">****</p> <p>Please see amendments below to Article 8 in this regard.</p>
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	<p>Some respondents stress that the combined buffers within the meaning of CRD IV are not part of the minimum capital requirement in a sense that using buffers is possible in certain situation and breach of the buffers do not lead to withdrawal of banking license. On the other hand, solvency requirement at the conglomerate level, as laid down in the FICOD is a minimum requirement.</p> <p style="text-align: center;">****</p> <p>One respondent [EBF] notes that the consultation period of six weeks is less than the EBA's expected practice as contained in its "Public Statement on Consultation Practices". The RTS does not specify which Council and EU Parliament proposals have been referred.</p> <p style="text-align: center;">****</p> <p>One respondent [EACB] has concerns on the time limit for transferable in due course as set out in Article 4.</p> <p style="text-align: center;">****</p> <p>One respondent views that it is unclear whether all eligible items to cover solvency requirements will be properly considered. There is a discrepancy between Article 2 (capital instruments of insurance are defined as "capital instruments referred to as 'own funds' in Solvency II". This definition might actually exclude certain eligible items under Solvency II such as "surplus funds") and Article</p>	<p style="text-align: center;">****</p> <p>The ESAs note this point; however, they agreed to the chosen six week consultation period, in order to prepare the draft RTS within the July 2011 EC's timelines</p> <p style="text-align: center;">****</p> <p>On this point the ESAs refer to the amended Articles, such as, for example, Articles 4 and 8.</p> <p style="text-align: center;">****</p> <p>The ESAs do not propose to amend Article 10, as they view that Article 10 aims to prevent the use of sector specific own funds to cover the risks of the other sector.</p>	<p style="text-align: center;">****</p> <p>Please see amendments below to Articles 4 and 8 in this regard.</p>
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	10 of the RTS (capital instruments are defined as "own funds recognised under sectorial rules"). It suggests referring to "eligible items to cover solvency requirements in Solvency II" to clarify the issue.		
Recitals	<p>One respondent (GDV) notes that Recital 9 does not differentiate between own funds eligible to cover sectoral capital requirements and excess own funds. Neither sectoral regimes nor FICOD require that any own fund item is fungible and transferable in order to be included in the calculation. This only applies to excess own funds. This is e.g. confirmed by Article 4 (1) of the Draft RTS. Please see our comments to Article 4 with regard to further issues.</p> <p>Propose <i>"(9) It is important to ensure that excess own funds are only included at conglomerate level if there are no impediments to the transfer of assets or repayment of liabilities across different conglomerate entities, including across sectors."</i></p>	<p>ESAS agree with the comment. The recital will be amended accordingly by adopting the terminology of Article 4.</p> <p>Due to the deletion and streamlining of recitals the recital 9 is now recital 2.</p>	The Recital is amended to reflect that own funds that exceed sectoral solvency requirements are included in the calculation of own funds.
Article 1	No comments received	Not applicable	No change needed
Article 2	<p>One respondent [GDV] did not support the definition of an ultimate responsible entity, and viewed that this exceeded the mandate of the present RTS. Further it views that the FICOD exclusively determines the entity responsible for the calculation.</p> <p>Another respondent [The Banking Stakeholder Group (BSG)] viewed that Eligibility own fund items for insurance activities states that capital</p>	<p>ESAs note that the definition of ultimate responsible entity forms part of their advice submitted to the EC as part of the review of the Directive [See http://eba.europa.eu/cebs/media/Publications/Other%20Publications/Opinions/JC-2012-88-FINAL--ESAs-Joint-response-to-the-COM-call-for-advice-on-fund.pdf</p>	<p>Deleted definition of "ultimate responsible entity" both in this Article and other references to it in the RTS.</p> <p>Delete definition of "indirect</p>

	<p>instruments of insurance are defined as "capital instruments referred to as 'own funds' in Directive 2009/138/EC)". This could be interpreted as actually excluding certain eligible items under Solvency II that are not explicitly included in the definition of "own funds" set out at Article 87 of the Solvency II Directive. Further it propose to refer to "eligible items to cover solvency requirements in Solvency II". However, Article 10 which defines sector specific own funds mentions "own funds recognised under sectorial 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. This needs to be clarified.</p>	<p>dated 12 October 2012] and that this proposal is beyond the remit of this RTS.</p> <p>The ESAs also note that the definition of "indirect holding" is not used in the RTS and the definition is not needed.</p>	<p>holding"</p>
Article 3	<p>One respondent [Insurance Europe] expressed its understanding, that the insurance group position should suffice for the purpose of Article 3 of the draft RTS as Solvency II does not permit double gearing and that the main concern arises from elimination of double gearing within a bank-led conglomerate. The respondent says they fully support any attempt to eliminate any risk of regulatory arbitrage and ensure a level playing field either through appropriate provisions at Financial Conglomerates Directive level or at the level of any associated RTS.</p>	<p>ESAs agree that Solvency II does not permit "classical" double gearing. However, Article 3 of the draft RTS clarifies that capital may only be recognised for the coverage of risks at the conglomerate level.</p> <p>The ESAs separately suggest a slight redraft to this Article to clarify its meaning.</p>	<p>Minor revisions to text to clarify its meaning.</p>
Article 4	<p>Respondents point to the different timeframes regarding the transferability of own funds within the banking and the insurance sector (interpretation of "in due course").</p>	<p>The ESAs note the respondents concerns on the practical issues and impediments in relation to transferability and availability of funds. The ESAs view that the financial conglomerate shall raise such issues during their</p>	<p>ESAs agree to delete explicit time conditions in this article, and enhance the drafting to clearly specify that conditions need to be made.</p>

	<p>They generally point out that a timeframe of three calendar days as a transferability criterion within the banking sector is too strict and not feasible, especially due to legal constraints imposed by company law.</p> <p>Nearly all respondents expressed that they were in favour of a uniform timeframe for both sectors and/or that the timing requirements should be aligned to sectors or rather sectoral rules and/or they argued, that the provision of any timeframe was contradictory to the sectoral rules, which do not provide any timeframe and/or that the provision on crisis management and resolution such as on restructuring did not stipulate any maximum deadlines for the transferability of own funds.</p> <p>In this context a few respondents (Millennium bcp, GBIC) point to the different nature of own funds and liquidity issues, whereas the latter are not subject to the transferability and availability requirement of FICOD.</p> <p style="text-align: center;">****</p> <p>One respondent [FBF] pointed out that the</p>	<p>discussions with the coordinator. Further, the ESAs note the differences in time periods contained at sectoral rules, but these need to be respected at the FICOD level.</p> <p style="text-align: center;">****</p> <p>The ESAs note that the own funds need effectively to be both transferable and available, in order to be included in the own funds calculation at the level of the financial conglomerate.</p> <p style="text-align: center;">****</p> <p>ESAs do not agree that it is best to wait, as requested by one respondent [GDV], until the finalisation of the respective sectoral regimes before drafting provisions regarding the concept of transferability and availability contained in FICOD. The ESAs are obliged under Article 150 CRD IV and 49, para 6 CRR to develop draft RTS. The ESAs can only use legal texts which already exist or are currently being discussed. Until the end of the term laid down in the mandate, the ESAs have adapted the draft RTS to reflect the final text of CRR/CRD IV .</p> <p>However, ESAs consider that it will be</p>	<p>Minor redrafting of the text to clarify that it is the coordinator to whom the 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.</p> <p style="text-align: center;">****</p> <p>The ESAs have proposed a transitional arrangement for this RTS under Article 17, should Solvency II come into application after that on CRDIV/CRR</p>
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	<p>Financial Conglomerates had to be in a position to demonstrate to its consolidating supervisor that transfers respond to the situation and that they do not affect durably its sectoral solvency.</p> <p style="text-align: center;">****</p> <p>One respondent [GDV] expressed its concerns with Article 4 as a whole. It believes that so far, the concept of transferability and availability does not seem to be a consistent concept and that it is still unclear which criteria have to be taken into account. The respondent required against this background to await clearance in the respective sectoral regimes and to delete Article 4 or at least limit it to qualitative requirements.</p> <p style="text-align: center;">****</p> <p>Furthermore, respondent [GDV] pointed out that the issue was already sufficiently covered by Article 10 which pursues a similar goal.</p>	<p>difficult to implement this RTS until both Solvency II and CRDIV/CRR have been implemented. In order to achieve legal certainty with regard to the application of Solvency II requirements the ESAs propose the insertion of a transitional provision within Article 17.</p> <p style="text-align: center;">****</p> <p>The ESAs disagree with the comments: From their legal perspective, the concept of transferability and availability is not sufficiently covered by Article 10. The meaning of Article 10 is the following: Article 10 sets forth that any excess of sector-specific own funds must never be recognised for the coverage of risks at conglomerate level. Regarding non-sector-specific own funds, any excess thereof may be recognised for the coverage of risks at conglomerate level, but only if they meet the requirements of Article 4.</p> <p style="text-align: center;">****</p> <p>The ESAs understand the question raised with regard to a possible deduction of excess capital in the way that it refers only to such excess own funds which do not meet the transferability and availability requirements. Irrespective of the method used the result must be that these excess own funds are not included in the own funds of the financial</p>	<p>A transitional provision was introduced in Article 17:</p>
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	<p style="text-align: center;">****</p> <p>One respondent [Banca Carige] highlighted that it was not clear if the capital excess on one of the sectors had to be deducted when calculating the solvency position of the Conglomerate and that it was not clear on which levels the capital excess had to be calculated.</p>	<p>conglomerate. The revised text of Article 4 seeks to clarify this.</p>	
<p>Article 5</p>	<p>For five respondents [BSG,IE, EACB, FFI, GBIC] in practice it will not be possible to satisfy both insurance requirements and banking requirements, regarding loss absorption (including predefined trigger events such as conversion in Common Equity Tier 1) or maturity, because of more stringent criteria under CRD IV. Two respondents [BSG and EACB] suggested that only criteria equally defined in both sectors should be used. One [GBIC] underlined that unlisted public limited companies will be forced to create Common Equity Tier 1 or Unrestricted Basic Own Funds at short notice, for instance by issuing new shares, which will hardly be feasible in the short term.</p> <p style="text-align: center;">****</p> <p>One respondent [Insurance Europe] argues that all funds can be made available at group level through the use of intra-group transactions, so they should be considered as loss absorbent and eligible at group level.</p> <p style="text-align: center;">****</p>	<p>The ESAs note the comments made. However, the FICOD requires that the instruments used in order to cover a deficit at the level of the conglomerate shall respect both sectoral regimes criteria of eligibility.</p> <p style="text-align: center;">****</p> <p>The ESAs view that there may be practical, legal and regulatory impediments which may need to be taken into account.</p> <p style="text-align: center;">****</p> <p>The ESAs disagree that the text for Article 5 (2) (a) 'And' should be amended, as the ESAs view that "and" should be used in order to be consistent with the text of the FICOD.</p> <p style="text-align: center;">****</p> <p>The ESAs note this comment. However Article 5 states that only those own funds</p>	<p>Redrafting of the text to clarify treatment of deficit of own funds.</p>

	<p>For one [FFI], 'and' should be replaced by 'or'.</p> <p style="text-align: center;">****</p> <p>One [GVD] underlines that for the insurance sector, Tier 1 and Tier 2 own funds according to Directive 2009/138/EC are accepted as cross-sectoral funds elements. There is inconsistency with Article 10 of the draft RTS which excludes Tier 2 ancillary own funds as sector specific from covering cross-sector risks. Apart from that FICOD states that if sectoral rules provide for limits on the eligibility of certain own funds instruments these limits should apply mutatis mutandis when calculating own funds at the level of the financial conglomerate. Therefore, it is not justified to exclude Tier 2 ancillary and Tier 3 own funds items entirely.</p>	<p>that meet both the CRDIV/CRR and Solvency II rules can be used to rectify the deficit. So any sector specific own funds that do not meet the rules of the other sector would not be eligible. Article 10 ensures that sector specific own funds can be used to cover risks at the sector level but not to cover risks of another sector.</p>	
Article 6	<p>Most respondents [BSG, EACB, FBF, GBIC] questioned the proposal to take the most prudent approach should only be applied to banking led financial conglomerates as, it would raise a level playing field issue and would lead to a significant change to the provisions in the CRD currently in force which states at article 59 "Method 1 shall only be applied if the competent authority is confident about the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation" and under article 46 in the CRR.</p>	<p>The ESAs note all the comments and accordingly propose deleting the paragraph requiring the most prudent method for banking led financial conglomerates in order not to create an un level playing field.</p> <p>Further the ESAs note that the choice of</p>	Article 6(2) and recital (12) deleted.

	<p>One [GBIC] suggests that regardless of whether the conglomerate is bank-led or insurance-led, the competent supervisor shall receive a plausible justification for the choice of the envisaged calculation method. On the ground of the required continuity of methods and due to the consequent lack of comparability, any parallel calculation is unacceptable. One [FFI] believes that the method used under CRR should have no influence to method used under financial conglomerate directive.</p> <p>For one [GBIC], the current wording suggests that the competent supervisory authority shall first consult with other supervisory bodies and then single handedly define the applicable methods for the calculations and then will invariably have to select the most conservative approach for reporting purposes. Both alternatives are utterly unacceptable.</p> <p>Many respondents underline that Article 6(2) goes beyond the mandate given to the ESAs [EACB, EBF, FBF], which is to “specify the conditions of application of the calculation methods” and not to modify the conditions of application enshrined in the Directive 2002/87/EC or to specify the modalities of its application.</p>	<p>the method is determined as per Annex 1 of the Directive, namely by the coordinator, after consultation with the other relevant competent authorities and the conglomerate itself.</p>	
Article 7	<p>One respondent [GDV] welcomed the clarification that the Solvency II consolidation Method as outlined by Level 2 Article 323bis is to be considered as an equivalent consolidation method for the purpose of the FICOD. However, viewed it important that equal</p>	<p>The ESAs note the comments.</p> <p>The ESAs view that based on the current status of Solvency II Directive, the caveat in order to consider Method 1 of the Directive 2009/138/EC equivalent to</p>	<p>The footnote has been moved to the background section.</p>

	<p>treatment must apply in general, and not only, as outlined in the explanatory text, if the scope of the group under Solvency II is similar to the one under FICOD. This is because the scope is not subject to the group's discretion. If the scope under Solvency II is limited compared to FICOD (which, however, is unlikely since Solvency II even covers IORPs, which FICOD doesn't), it should not affect the adequacy of the calculation Method for the insurance group. Furthermore, there is no reason for restricting equivalence to insurance-led conglomerates. The application of Method 1 of Solvency II is solely based on sectoral preconditions which may also be complied with if the banking sector is deemed to be the most important one from the conglomerate perspective. The questionable distinction between bank-led and insurance led-conglomerates may lead to a different treatment of equal structures without a justification. There is likewise need for the application of Method 1 of Solvency II if in a bank-led conglomerate insurers hold participations in banks. Propose, Article 7 should be drafted as follows:</p> <p><i>Method 1 of the Solvency II shall be considered as equivalent to the consolidation as defined under Method 1 of the Directive</i></p> <p>One respondent [GBIC] seeks that banking led financial conglomerates can also use the consolidation scope under SII rules for the Method 1 calculation.</p> <p>Another respondent [FFI] raises concerns of inconsistency. Firstly, Article 7 implies that consolidation may be done according to Solvency II calculations for an insurance-led</p>	<p>that of method 1 of the FICOD for the calculation of the capital adequacy at conglomerate level, the scope of the group should be the same or the difference immaterial.</p>	
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	<p>financial conglomerate. Explanatory text however states that according to Solvency II multiple use of own funds and intra-group creation of capital should be eliminated.</p> <p style="text-align: center;">****</p> <p>Another respondent [FFI] underlines that the CRR includes also the similar consolidation principles (multiple use of own funds and intra-group creation of capital should be eliminated). Against this backdrop, the CRR consolidation should also be equivalent to Method 1 of financial conglomerate. Further they seek that Article 7 be deleted as it does not give any guidelines to what extent the Solvency II consolidation would be used for when calculating solvency of a financial conglomerate. As an alternative to deletion, consolidation should be further clarified and CRR consolidation should be recognised as an equivalent to Method 1 of the financial conglomerate directive.</p> <p style="text-align: center;">****</p> <p>Another respondent [Insurance Europe] commented that it should be clear that Solvency II applies for the consolidation of insurance-led conglomerates. Further the respondent questioned why equivalence in these RTS is restricted to Method 1 and does not include Method 2 allowed under Solvency II.</p>	<p style="text-align: center;">****</p> <p>The ESAs disagree. According to Solvency II provisions, when calculating their solvency requirements insurance groups should consolidate the participations in the other financial sectors. For this reason, when the insurance group is also an insurance-led financial conglomerate, there is no need to treat again the participations in the other financial sectors at conglomerate level, under a consolidated approach. The same reasoning doesn't apply to the banking-led conglomerates given that, according the banking sectoral rules, the participations in the insurance sectors are mainly deducted and not consolidated (for banking-led conglomerates the relevant treatment is specified in Art. 14).</p> <p style="text-align: center;">****</p> <p>The ESAs view method 2 is specified in order to be consistent with Solvency II directive, in particular as regards the definition of the participation (see Article 15).</p>	
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<p>Article 8</p>	<p>Some of the respondents [EACB, FFI, FBF and the BSG] stated that the Level 1 FICOD text (and in particular Article 6(4)) does not specifically refer to buffer requirements, capital add-ons or any other specific capital requirements when calculating supplementary capital adequacy requirements. The solvency requirements should correspond to the sectoral rules which only include the minimum capital requirements. The respondents proposed removing references to Pillar 2 and any buffer requirements from this article.</p> <p style="text-align: center;">****</p> <p>A few respondents [EACB and BSG] commented that in the banking sector buffers increase the required solvency ratio however the RWAs remain calculated in reference to an 8% ratio. These do not modify the capital requirement calculation itself. The countercyclical and systemic risk buffers will be defined at the level of each member state and be institution specific and hence would raise concerns relating to level playing field and impact the comparability among different FICOs.</p> <p style="text-align: center;">****</p> <p>A respondent [EACB] argued that including the buffers will result in a drop in the solvency ratios for FICOs and give a wrong view of the loss absorption capabilities. Under CRR the buffers can be breached and used under certain conditions whereas under FICOD they</p>	<p>The ESAs note the comments and also that the final CRDIV/CRR text contains further details on capital requirements than the draft CRDIV/CRR proposal. Accordingly the ESAs propose that when having regard to the banking or investment services sector, both the ICAAP requirement, of Pillar 2, which requires institutions to maintain on an ongoing basis amounts, types and distribution of internal capital considered adequate to cover the nature and level of risks under CRDIV, and the combined buffer requirement, under CRDIV should be taken into account. The ESAs note that when having regard to the insurance sector, under Solvency II, the ORSA of Pillar 2 is not a capital requirement, and does not need to be taken into account.</p> <p style="text-align: center;">****</p> <p>The ESAs are not proposing to create any new reporting requirements in this RTS as this is not within the scope the ESAs' mandate of this RTS.</p> <p style="text-align: center;">****</p> <p>The ESAs note this comment, and have drafted this RTS without prejudice to the</p>	<p>Article 8 is redrafted to reflect the requirements contained in Directive 2013/36/EU.</p>
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	<p>would form a minimum requirement and could not be breached.</p> <p style="text-align: center;">****</p> <p>A respondent [FBF] noted that the Joint Forum does not require a capital buffer at the financial conglomerate level. The respondent states that recent events do not support the argument that the risk of combined banking and insurance activities is equal to or greater than, the sum of these two activities standalone risks.</p> <p style="text-align: center;">****</p> <p>A few respondents [BSG and FBF] stated that Annex I of the FICOD does not ask for any solvency ratio at the financial conglomerate level. In the three Methods, the supplementary capital adequacy requirements is calculated as the difference between the own funds and solvency requirements. To avoid any ambiguity, these respondents suggest that this principle should appear in Article 14 (Technical calculation Methods) of the RTS, at its very beginning, and also in its Executive Summary (Technical calculation Methods).</p> <p>Further, these respondents argued that although Article 46 (3b) of the draft CRR calls for a solvency ratio at the conglomerate level, it would not be legally acceptable to define it as proposed under the RTS (i.e. by including all capital add-ons and capital buffers in the solvency requirements) as it would result in making Pillar 2 public, which is strictly prohibited by law. A few of the respondents</p>	<p>sectoral rules.</p> <p style="text-align: center;">****</p> <p>The ESAs note this comment, and have drafted this RTS without prejudice to the sectoral rules.</p> <p style="text-align: center;">****</p> <p>The ESAs note the comments in relation to CRR Art 46(3b) and coverage ratios, which they view are not within the mandate of this RTS.</p>	
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	[BSG and FBF] suggest, disclosing a coverage ratio calculated as total capital at group level in accordance with this RTS, divided by the sum of minimum requirements provided in sectorial regulations, taken into account adjustments required by the RTS. However respondents note that should a coverage ratio be required under art 46 of the CRR, it would be advisable to clarify how it should be calculated using Method 2.		
Article 9	-	-	-
Article 10	<p>Some respondents [GBIC, Insurance Europe, GIA and EACB] considered that there should not be a sector specific own funds restriction. Ancillary Tier 2 and Tier 3 should be considered available for the conglomerate and that this is not consistent with the provisions set out in Annex 1 of FICOD.</p> <p style="text-align: center;">****</p> <p>One respondent [GBIC] commented that the provisions in this article may lead to higher volatility of own funds. Alongside the higher solvency requirements required at the sector level, adequate buffers need to be maintained at group level.</p>	<p>ESAs note the comments made. The ESAs rationale behind this Article is that capital cannot be used above sectoral rules where its characteristics are different to that in the other sector. In line with this, sector specific own funds can be used to cover the risks at sectoral level within the limits and caps set out in the sectoral legislation. Sector specific own funds cannot be used to meet risks in other sectors.</p> <p style="text-align: center;">****</p> <p>The ESAs note this comment. However Article 5 states that only those own funds that need both the CRDIV/CRR and Solvency II rules can be used to rectify the deficit. So any sector specific own funds that do not meet the rules of the other sector would not be eligible. Article 10 ensures that sector specific own funds can be used to cover risks at</p>	<p>The ESAs propose amending Article 10 and to move Article 10 after Article 4. Article 10 becomes Article 5 and minor revisions to the text were made to clarify its meaning.</p> <p>Also small drafting changes made to the corresponding recital 10 were made.</p>

	<p style="text-align: center;">****</p> <p>Some respondent [GIA and EACB] noted there is an inconsistency with Article 5, where for insurance sector, Tier 1 and Tier 2 own funds according to Directive 2009/138/EC are accepted as cross-sectoral own funds.</p>	<p>the sector level but not to cover risks of another sector.</p> <p style="text-align: center;">****</p> <p>Accordingly the ESAs propose amending the changes made to Article 10 (1)(b) relating to Tier 1 such that they be consistent with developments in Solvency II in the terminology that is used for Tier 1 own funds.</p>	
Article 11	<p>A few respondents [EACB and FFI] pointed out that Article 11 should be clarified that in addition to capital charge relating to insurance investments, also the possible Expected Loss resulting from relevant entity holding under CRR should not be applied at conglomerate level. This would be consistent with eliminating the capital charge. The clarification on eliminating Expected Loss is necessary, since expected loss resulting from IRBA is not a capital charge but a deduction item and as such is out of scope of Article 11 in its present form.</p> <p style="text-align: center;">****</p> <p>One respondent [FBF] notes that Article 11 is not fully in line with the explanatory text. It suggests that Article 11 should refer to the Article 14 instead of referring to the paragraphs 3 to 4. According to response 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</p>	<p>The ESAs note the Stakeholders comment which relate to the requirement from the Internal Ratings Based model approach in relation to treatment of a negative amounts resulting from the calculation of expected loss amounts laid down in Articles 158 and 159 of the CRR.</p> <p style="text-align: center;">****</p> <p>The ESAs note the comment. The purpose of Article 11 is to avoid simultaneous application of both risk weighting and capital charge to the same insurance holding.</p>	<p>The ESAs have added at the end of the Article 11 a new sentence clarifying that the expected loss amount under the Internal Ratings Based should be added back to own funds at the conglomerate level.</p>

	investment firms and not with cross-sector holdings. Finally, Article 11 covers also cross-sector investments and holdings eliminated through consolidation under method 1.		
Article 12	<p>One respondent [GDV] stated that whilst recognizing that Annex I of the FICOD requires the calculation of a notional capital requirement for non-regulated entities, notes that the application of the Directive to non-regulated entities is still subject to the fundamental review by the Commission and therefore proposes not to address this issue in the RTS until the review is finalised.</p> <p style="text-align: center;">****</p> <p>Another respondent (Insurance Europe) commented that Article 12(1) introduces the concept of "non-regulated mixed-financial holding company" and believes that the term "non-regulated" is redundant and confusing. The respondent suggests to include a definition of "non-regulated financial entities" or "non-regulated financial sector entities", which should be used in a consistent manner and be consistent with Solvency II as well. Article 12(1) for example currently refers to "non-regulated financial sector entities" while Article 12(2) refers to "non-regulated financial entities" and in the explanatory text for Article 12 reference is made to a "non-regulated entity".</p>	<p>The ESAs disagree with the proposal not to address the issue of non-regulated entities in the RTS until the EC's has completed its fundamental review of the FICOD.</p> <p>The ESAs view that due to Article 150 CRD IV and 49 para 6 CRR they are obliged to develop a draft RTS within certain timelines. Accordingly the ESAs have drafted this RTS based on the legal texts which have already come into force or proposed.</p> <p style="text-align: center;">****</p> <p>The ESAs agree to delete the term "non-regulated" in the context of mixed-financial holding companies and to clarify the terminologies by consistently using the term "non-regulated financial sector entities".</p> <p>ESAs will also amend Article 12 reflecting "notional" in Annex 1 of the Directive.</p> <p>The ESAs note that Annex 1 of the Directive refers to the term, "non-regulated financial sector entity" which is not defined.</p>	Small drafting changes made to this Article to clarify the terminology.

<p>Article 13</p>	<p>One respondent [Banca Carige] noted that it is not clear how the sectoral rules have to be implemented in the transitional arrangements. Further modifications to the RTS is needed as CRD IV/CRR shall be applied with effect from 2013 and Solvency II from 2015.</p> <p style="text-align: center;">****</p> <p>One respondent [GBIC] welcomes in its general specific comments the incorporation of sector-specific transitional and grandfathering rules, as it is consistent with the fact that the draft RTS is essentially based on the industry specific rules and their definitions. For bank-led conglomerates it should be clarified that insurance interests do not have to be deducted by the entity regarded as ultimately leading if and when this interest is already taken into account accordingly at the level of the conglomerate. CRD IV/CRR requires mandatory [capital] deductions for unconsolidated direct and indirect participations in the financial industry. However, under the provisions of Solvency II, it is also possible to opt for capital backing. The sectoral requirements for capital deductions should respectively be applied on the upstream group level. The draft RTS does neither envisage an adjustment nor an appropriate waiver in the sectoral requirements. In addition to that the current</p>	<p>The ESAs acknowledge that there may be potential transitional impacts given the current status and proposed implementation timeframes of the various sectoral regimes, to the implementation of this RTS.</p> <p>Moreover, the ESAs are mindful that there will be the implementation of the CRDIV/CRR and Solvency II will have a significant impact of Financial Conglomerates.</p> <p>The ESAs propose no changes to the Article 13 due to amendments in Article 17 and its corresponding recital.</p> <p style="text-align: center;">****</p> <p>The ESAs note the comments, and the transitional arrangements for CRDIV/CRR and Solvency II are not within the mandate of this RTS.</p>	<p>No change to this Article.</p> <p>Changes made to Article 17</p>
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	<p>waivers of the draft RTS apply only companies which can be explicitly ascribed to the other sector institutions which leads to double counting. Hence, it is worth considering counting financial institutions/financial undertakings only once as a capital deduction item in one of the two sectors. Once they have been captured for capital deduction purposes, this should then give rise to a waiver at the group level of the respectively other sector (provided an appropriate inclusion in the aggregation takes place at the level of the financial conglomerate.</p>		
<p>Article 14</p>	<p>One respondent [GDV] suggests to clarify Article 14 (8) as follows: <i>The valuation of assets and liabilities calculated for the purposes of Solvency II shall also be used at the level of the financial conglomerate.</i>"</p> <p style="text-align: center;">****</p> <p>The same respondent suggests that with respect to Article 14 (13), we request the Joint Forum to consider discretionary adjustments for intra-group transactions, similar to Article 14 (2) for the calculation of own funds.</p> <p style="text-align: center;">****</p> <p>One respondent [BSG] views that Article 14 (8) and related explanations state that for the insurance parts of the conglomerate, the valuation of assets and liabilities according to Solvency II shall be applied in the calculation of Method 1. This ensures consistency between the conglomerate's regulatory capital calculation and the insurance regulatory capital calculations. On the other hand, the</p>	<p>The ESAs agree to amend Article 14 (8) as proposed.</p> <p style="text-align: center;">****</p> <p>The ESAs view no amendments needed considering that FICOD requires to sum the sectoral solvency requirements without waivers for intra group transactions.</p> <p style="text-align: center;">****</p> <p>The ESAs note that Article 14 (8) requires that the assets and liabilities belonging to the insurance entities within the conglomerate are measured (as specified in Article 14(8)) according to the Solvency II valuation criteria, in order to be compliant with sectoral regulations and valuation criteria. So,</p>	<p>Small drafting changes made to this Article to clarify the terminology, and legislative framework to which the specific aspects of the calculation should be made.</p>

	<p>corresponding explanations determine that the accounting consolidated accounts shall be the basis for the calculation of own funds at the conglomerate level. It is thus unclear, whether a reconciliation of the Solvency II basic own funds to insurance group's contribution to own funds of the consolidated balance sheet value of own funds will be necessary or not.</p> <p style="text-align: center;">****</p> <p>Another respondent [GBIC] seeks clarification that the use of SII valuation approach for assets and liabilities is equally permissible for the calculations under Method 1. Given up to now the "accounting consolidation Method" only allowed using data from the consolidated financial statement.</p> <p style="text-align: center;">****</p> <p>Another respondent [Banca Carige] views that Article 14.9 is different from the existing capital regulation on the subordinated debt, the new framework seems to ask for a recalculation of the sectoral threshold at the Conglomerate's level</p>	<p>the RTS does not require a reconciliation to the insurance basic own funds, but a change of the valuations applicable to the assets and liabilities belonging to the insurance entities within the conglomerate (from accounting valuation to Solvency II valuation).</p> <p style="text-align: center;">****</p> <p>The ESAs confirm the need to consider the scope of the financial conglomerate in the calculation of limits and threshold.</p>	
Article 15	<p>One respondent [GDV] welcomes that the definition of a participation according to Solvency II applies for the purpose of calculating the capital requirements and own funds of financial conglomerates. However, this should be the guiding principle not only for the Pillar I-requirements but for the entire scope of the FICOD. We would like to see the Joint Forum to include such a proposal in its final recommendations to the Commission</p>	<p>The ESAs note the comment, and view that this is beyond the remit of our mandate.</p>	<p>No change needed.</p>

	<p>concerning the fundamental review of the FICOD.</p> <p>****</p> <p>Some respondents [FBF and EACB] view there needs to be clarification that intra-group exposures should be eliminated from capital requirements, in order to ensure consistency with the rules applied for capital calculation.</p>	<p>****</p> <p>The ESAs view no amendments needed considering that FICOD requires to sum the sectoral solvency requirements without waivers for intra group transactions.</p>	<p>****</p> <p>No change needed.</p>
Article 16	No comments	-	-
Article 17	<p>Some respondents [BSG and EACB] suggested a clarification of the regulatory timetable. They noted that Recital (17) states that "it is necessary that the new regime for treatment of Methods of consolidation enters into force the soonest possible following the entry into force of the CRD IV - CRR I and Solvency II ", but Article 17 only states "this regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union". Moreover one [BSG] suggested that Article 17 should be completed by the following sentence "Until CRR/CRD IV and Solvency II have both entered into force, financial conglomerates have to comply with the national transpositions of Directives 2002/87/EC and 2011/89/EU".</p> <p>****</p> <p>Some respondents [EACB and FFI] view that once CRD IV/CRR and Solvency II are adopted, sufficient time for implementing the changes should be allowed before the new RTS entry into force. Moreover, in order to properly account for the changes in the sectorial</p>	<p>The ESAs understand respondent's concern about the implementation timeline. The proposal for Article 17 is now an entry into force of the standard after implementation of Solvency II and CRR.</p> <p>****</p> <p>The ESAs do not set the deadlines for submission of this RTS. Moreover the ESAs share the respondents concern, and view working under fixed deadlines for submission, when legislative discussion is still taking place adds to</p>	<p>An addition has been made in Article 17, and an amendment made to the Recitals, to reflect that should Solvency II not apply until after the application of CRDIV/CRR, then several articles of this RTS should not apply in this interim period, and the underlying calculations for insurance sectoral rules be based on national implementation of the existing solvency regime, at the time of the calculation.</p>

	<p>frameworks a new consultation should be launched for the RTS on capital calculation methods for financial conglomerates when the underlying provisions (CRD IV/CRR I, Solvency II and potentially Financial Conglomerates Directive) are finalized (including level 2 and 3 implementing measures). Only then can a workable solution of uniformly applicable set of Methods for calculating the solvency of the financial conglomerate can be found. In addition, an impact study currently takes place on the basis of this consultation paper. It is highly important that insights from this QIS, even if they arrive later than the end of the consultation period of these RTS, should be taken into account.</p>	<p>the difficulty. The ESAs would welcome the EU Commission consider to have flexible deadlines in legislative proposal such that is scheduled as a dependency (say a minimum 12 months) after the legislative stage comes into effect</p>	
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