

**French Banking Federation Response to Joint Consultation Paper
on draft Regulatory Technical Standards on risk concentration
and intra-group transactions under Article 21a (1a)
of the Financial Conglomerates Directive (JC/CP/2014/04)**

The French Banking Federation (FBF) represents the interests of the banking industry in France. Its membership is composed of all credit institutions authorized as banks and doing business in France, i.e. more than 390 commercial, cooperative and mutual banks. FBF member banks have more than 38,000 permanent branches in France. They employ 370,000 people in France and around the world, and service 48 million customers.

The FBF welcomes the opportunity to comment on the Consultation Paper on the draft Regulatory Technical Standards on risk concentration and intra-group transactions under the financial conglomerate directive (FICOD).

Prior to responding in detail to the questions raised in the consultation, we would like to make some general remarks.

We are particularly concerned about some key issues in relation to intra-group transactions and significant risk concentrations that are not addressed with enough clarity in the RTS, leaving interpretation to National Competent Authorities (NCA) or to the coordinator, while the JC's mandate is to provide clarifications in those fields, including on definitions to be used. Since this consultation relates exclusively to significant risk concentration and significant intra group transactions, it is our view that some key notions should be more precisely defined in the RTS to foster a consistent application of the FICOD across the EU, in particular:

- The term "significant" for both risk concentrations and intra-group transactions is not defined in the RTS. Even though broad lists of key considerations to be taken into account when assessing the significance of a risk concentration or of an intra-group exposure are provided, it is up to each NCA to eventually determine whether an exposure is significant or not. This lack of clarity is not desirable in the regulatory field and may lead to various interpretation issues and will hinder the level playing-field in the EU;

- Risk concentration types and intra-group exposures are broadly defined at Art. 2(1) and Art. 3(1) respectively. However the definitions set out in those articles may lead to diverging understandings of how they should apply in practice between supervisors and across the financial industries. In particular, the RTS should be aligned with the existing sectorial regulations as required under Art. 7(5) and Art. 8(5) of the FICOD and should clarify that the definitions provided in sectorial regulations are to be used in the context of this RTS (e.g. the large exposure regime in the CRR; risk concentrations in Solvency 2, intragroup-transactions under the Solvency 2 regime, etc.).

On the other hand, while some of the key notions should be clarified, the draft RTS appears to require granular supervisory reportings in relation to both intragroup exposures and risk concentrations. It is our view, that, to avoid duplication and inconsistencies between regulatory reportings, information required from financial conglomerates should be grounded as much as possible on the existing sectorial reporting requirements. It should be clearly stated in the RTS that reportings required from financial conglomerates should be consistent with the existing sectorial supervisory reportings.

Finally, it is our view that the RTS goes beyond the JC's mandate as provided in FICOD by giving specific powers to NCA to require that certain intra-group transactions of the financial conglomerate must be performed at arm's length terms.

Moreover, the powers given to NCA to define thresholds on a case-by-case basis will be detrimental to the functioning of the level-playing field in the EU or even at national level. We suggest clarifying that the threshold mentioned at Art. 8 (2) of the FICOD with regard to intra-group transactions (5%) should apply.

The due date of the first reporting is not indicated. We seek for clarification. Besides, the frequency of reporting should be annual and the Joint Committee should provide a reporting template.

II- Answer to questions

Question 1: Is the suggested scope of the draft regulatory technical standards and the definition of significant risk concentration and significant intra-group transactions appropriate with respect to the mandate given in Article 21a (1a) of the Directive 2002/87/EC (FICOD)?

The definitions of risk concentration and of intra-group exposures provided at Art. 2 (1) and 3 (1) respectively are quite broad, and many issues remain in the hand of the competent authority or coordinator (including setting a threshold). Besides, the definitions set out in those articles may lead to diverging understandings of how they should apply in practice. As required under Art.7 (5) and Art. 8(5) of the FICOD, the RTS should be aligned with the existing sectorial regulations and should clarify that the definitions provided in sectorial regulations are to be used in the context of that RTS (e.g. the large exposure regime in the CRR; risk concentrations in Solvency 2; intragroup-transactions under the Solvency 2 regime, etc.).

The term “significant” itself is not defined in the RTS in relation to both risk concentrations and intra-group transactions. Even though broad lists of key considerations have to be taken into account when assessing the significance of a risk concentration or of an intra-group exposure are provided, it is up to each NCA / coordinator to eventually determine whether an exposure is significant or not. This uncertainty is not desirable in the regulatory field and may lead to various interpretation issues and will hinder the level playing-field in the EU.

Concerning significant intra-group transactions, we are of the view that the threshold to be applied is already specified at Art. 8(2) of the FICOD (at least 5% of the total capital requirements at the level of a financial conglomerate) and that the reporting of this type of transactions should be the same as the existing ones in Member States where that provision is already in force.

Finally, the RTS provides at Art. 3 (5) that “*Different transactions linked to each other in terms of time, function and planning shall be considered as one single transaction.*”

This issue lacks precision, but could be detrimental in the context of recurring transactions.

Question 2: Are the criteria, which coordinators and other relevant competent authorities shall take into account when identifying types of significant risk concentration and significant intra-group transactions, defining appropriate thresholds and periods for reporting and overviewing significant risk concentration and intra-group transactions, appropriate and comprehensive?

The RTS provides lists of key considerations to be taken into account when assessing the significance of a risk concentration and of an intra-group exposure. However, it is up to each NCA / coordinator to eventually determine whether an exposure is significant or not.

As outlined above, we are particularly concerned by the absence of clear definitions and predefined thresholds in the RTS. We are of the view that those uncertainties are not desirable in the regulatory field, especially where supervisory reportings are required on a regular basis. It will inevitably lead to various interpretation issues both among supervisors and in the industry which, as a result, may hinder the level playing-field in the EU. Moreover, from a practical standpoint, it will prevent financial conglomerates to clearly ascertain which exposures in the meaning of the FICOD need to be reported to supervisory authorities.

An alternative and more desirable option would be to refer:

- for significant intra-group transactions, to the existing threshold in the FICOD (5% of capital requirements at the financial conglomerate level),
- for significant risk concentrations, to the large exposure threshold set out at Art. 392 of the CRR in the case of banking-led conglomerates (10% of the regulatory capital at the financial conglomerate level) or to the significant risk concentrations as defined at Art. 244 of directive 2009/138/EC in the case of insurance-led conglomerates (Solvency 2 directive).

To address any possible concern not already covered by the above criteria and to avoid possible cliff effects, the RTS could provide that financial conglomerate should add qualitative information on other significant intra-group and risk concentration exposures in their risk or internal control reports to be provided annually to the supervisory authorities.

Besides, it seems to be suggested at Art. 2(1) and 2(2) of the RTS that concentration with regard to liquidity and currency risks should be reported to supervisors. However, the RTS does not provide any clarifications on possible issues to be tackled and monitored in relation to those risks at the level of a financial conglomerate, if any, and it does not include any definitions and relevant metrics to measure those risks across a financial conglomerate.

The FICOD directive itself does not refer to liquidity and currency risks in the context of a financial conglomerate. We are consequently of the view that those references to liquidity and currency risks should be removed from the RTS, unless clarifications are provided on issues that needs to be specifically tackled at the level of a financial conglomerate in relation to those risks and on the relevant metrics to be used to measure those concentrations if they exist.

Furthermore, the criteria contagion effect and conflict of interest for the definition of the concentration risk (art 2-2 g & i) and the intragroup transaction (art 3-2 b & d) should be removed. The concept are not precisely defined, there is room for interpretation.

Question 3: Is the proposed information to be contained in a report on significant risk concentration and significant intra-group transactions appropriate? If not, which other information should be included?

The information to be reported in the significant risk concentration reporting includes the following:

- significant risk concentration by counterparties and groups of interconnected counterparties,
- geographical areas,
- economic sectors,
- currencies.

This reporting is very granular (by area / sector / per unit / currency) even if it only concerns significant risk concentrations. This concept remains unclear and at the discretion of coordinator and relevant authorities.

As outlined at questions 1 and 2 above, some of the key notions should be clarified in the RTS prior to specifying additional detailed reporting requirements. The RTS provides a broad range of reporting requirements in relation to both intragroup exposures and risk concentrations but does not address the consistency issue of those requirements with the existing sectorial supervisory requirements. It is our view, that, to avoid duplication and inconsistencies between regulatory reportings, information required from financial conglomerates should be grounded on the existing sectorial reporting requirements and definitions as much as possible. It should be clearly stated in the RTS that definitions and concepts used in supervisory reportings at the financial conglomerate level should be consistent with those existing in the sectorial supervisory reportings.

Besides, the frequency of reporting should be annual and the Joint Committee should provide a reporting template.

Question 4: Do you agree with the proposed set of supervisory measures to be taken into account by competent authorities? If not, which other measures should be included?

Some of the measures that the national competent authorities would be entitled to take in accordance with the draft RTS are "intrusive" and introduce an unnecessary duplication of regulations with the FICOD Directive itself that already sets out many provisions relating to governance and internal control! This "gold plating" approach does not seem appropriate, particularly on these following issues:

(a) to require that certain intra-group transactions of the financial conglomerate shall be performed at arm's length or that intra-group transactions, which are not performed at arm's length, shall be notified;

(b) to require that certain intra-group transactions of the financial conglomerate shall be approved through specified internal procedures with the involvement of the board of directors, independent directors or external experts of the financial conglomerate;

(f) to require a strengthening of the risk management processes and internal control mechanisms of the financial conglomerate;

Furthermore, according to the draft RTS, competent authorities would be entitled to define specific thresholds on a case-by-case basis to identify significant risk concentrations and significant intragroup transactions. As already outlined above, we are of the view that thresholds relating to intra-group and concentration exposures should refer to those already provided in the FICOD (Art. 7 and 8). In particular, the threshold on intra-group exposures already provided at Art. 8(2) of the FICOD is appropriate (5% of capital requirement see above). Introducing a lower threshold is not justified, as this would lead to possible level playing-field issues between financial conglomerates (depending on their coordinator and predominant sector) and across Member States.

Finally, according to the draft RTS, the competent authorities are entitled to require financial conglomerates to report more frequently than annually. Since the RTS should focus on **significant** risk concentrations and **significant** intra group transactions, it would be advisable to modify those paragraphs as follows, otherwise the RTS would result in the production of exhaustive reportings, more than once a year. Furthermore, it should be noted that, in general, it is not necessary to have a monitoring more frequently than every six months for this type of risk.

*(c) to require regulated entities or mixed financial holding companies to report more frequently than annually on **significant** risk concentration and **significant** intra-group transactions;*

*(e) to require additional information on **significant** risk concentration and **significant** intra-group transactions of the financial conglomerate;*

<p>Question 5: Do you agree with the analysis of the impact of the proposals in this Consultation Paper? If not, can you provide any evidence or data that would further inform the analysis of the likely cost and benefit impacts of the proposals?</p>
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No comment