European Banking Federation

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The EBF is committed to supporting EU policies to promote the single market in financial services in general and in banking activities in particular. It advocates free and fair competition in the EU and world markets and supports the banks' efforts to increase their efficiency and competitiveness.

EBF COMMENTS ON THE EBA, EIOPA AND ESMA'S JOINT CONSULTATION PAPER ON ITS PROPOSED RESPONSE TO THE EUROPEAN COMMISSION'S CALL FOR ADVICE ON THE FUNTAMENTAL REVIEW OF THE FINANCIAL CONGLOMERATES DIRECTIVE

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1. The EBF supports the European Commission's efforts to identify structures which might have remained outside of the scope of the Financial Conglomerates Directive (FICOD) so far and to extend the supplementary supervision of financial conglomerates to those components which expose the group of which they are a component to the type of risks which the Financial Conglomerates Directive seeks to address.

2. We note that the European Commission is also examining in parallel how the EU legislative framework would need to address Shadow Banking Activities to prevent regulatory arbitrage. The outcome of this workstream is likely to be relevant to the present consultation as well as it may influence the definition of two main building blocks of the FICOD, i.e. the concepts of "financial sector" and "regulated entity". It is essential, therefore, that the FICOD and Shadow Banking workstreams be duly coordinated.

   The Financial Conglomerates which the EBF members represent are, in principle, structures which are headed by a credit institution. Our impression is that the proposed consultation does not touch upon such structures: entities within a banking group that are not regulated as such under Community Law, are indeed already included today in the supervision that is being organised on the basis of the Capital Requirements Directive (CRD) taking into account that the CRD organises banking supervision at a consolidated level so as to include the banking group as a whole.

3. There is one particular are of concern, i.e. the proposed inclusion of "all" SPEs in Financial Conglomerates. Because of the supplementary character of the FICOD regulation, we strongly suggest that the FICOD Review would focus first on the scope of consolidation within the sectoral regulation when examining this issue. If there are good

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reasons to restrain from requiring a given entity to be included in the consolidation perimeter – neither as part of a banking nor an insurance group -, we believe that the conclusion needs to be that its inclusion in a financial conglomerate would not be necessary or appropriate either.

As any gap in the present regulation should, therefore, be indentified and resolved as part of the sectoral rule, the banking sectoral rules governing consolidation should be examined first. CRD: Consolidation requires the entity in question (i) to carry out certain activities and (ii) to be controlled.

- The first condition is hardly ever a hurdle given the already ultra-wide definition of activities that may be made subject to consolidation. This is in particular true for all activities relating to "financial instruments'. We have not become aware of SPVs which would not meet the conditions of a financial institution. In other words, while SPVs are typically not "regulated", they are practically, without exception, eligible for bank sectoral consolidation.

- The second condition, "control", is much more difficult to achieve or demonstrate. It should be reminded foremost, however, that consolidation for regulatory consolidation purposes has substantially further-reaching consequences than consolidation for accounting purposes. For good reasons, the term "control" implies that the "controlling" entity is able – whether on a legal or factual basis – to *enforce* its obligation of a group parent with regard to its subsidiaries. The SIC 12 approach under IFRS does not ensure that. In fact, it is largely based on fiction rather than fact, as it equates risk with control.

  We were also surprised that SIC 12 is still taken into consideration despite the fact that it has been abolished under IFRS rules giving way to a uniform application of the control concept as well.

Our conclusion is, therefore, that the fact that many SPVs may not be consolidated for regulatory purposes (nor form part of financial conglomerates accordingly) should not *per se* give rise to concerns: risks of whichever nature which remain on an institution's books are very tightly captured under the revised sectoral regimes (starting with CRD I/Basel II).

Moreover, where a certain exposure may not be fully reflected under Pillar 1, Pillar 2 (SRP and ICAAP) is designed to close such a potential gap.

In other words: what is important is a thorough identification of risks and their adequate provisioning against. If this is achieved (and we think this is the case now), consolidation or non-consolidation becomes of lesser importance from a prudential perspective.

In any event, we do not see any evidence which would support the undifferentiated inclusion of "all" SPVs within the scope of conglomerates' supervision."

4. In general, we believe the consultation paper to be an acceptable starting point for further work. It is, however, too theoretical and probably not sufficiently rigorous to constitute a solid basis for sound and definite policy options.

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