Financial Conglomerates Directive

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Financial Conglomerates Directive

Chapter 1

Commission Delegated Regulation (EU) No 342/2014

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[redacted]

Preamble

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 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 and in particular Article 49(6) thereof,

Having regard to Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 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 Council and in particular to Article 21a(3) thereof,

01/01/2021

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 that is to say, 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.

(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) Appropriate rules 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. Those requirements 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 of Title VII of Directive 2013/36/EU of the European Parliament and of the Council, 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, both a notional solvency requirement and a notional level of own funds should be calculated for non-regulated financial entities within the financial conglomerate.

(7) Part II of Annex I to Directive 2002/87/EC sets out three technical methods for calculating capital adequacy requirements at the level of the financial conglomerate: "Accounting consolidation method" (method 1), "Deduction and aggregation method" (method 2) and "Combination method" (method 3), allowing the combination of method 1 and method 2. The technical calculation methods 1 and 2 should be specified to ensure their consistent application. In addition, the circumstances for the use of method 3 should be specified and it should be ensured that the competent authorities permit the use of that method in similar circumstances, apply common criteria and require that method to be applied in a way which is consistent across financial conglomerates. The competent authorities should only allow the application of method 3 where a financial conglomerate can demonstrate that the application of method 1 or 2 alone would not be reasonably feasible. The use of method 3 should be consistent over time to ensure equivalent conditions. As the technical calculation methods are carried out in accordance with the technical principles referred to in Part I of Annex I to Directive 2002/87/EC, it is necessary to specify those principles as well.

(8) Method 1 for calculating group solvency, as set out in Directive 2009/138/EC of the European Parliament and of the Council and method 1 for calculating supplementary capital adequacy requirements, as set out in Directive 2002/87/EC should be considered equivalent 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 the calculation of own funds in accordance with the definitions and limits established in the relevant sectoral rules.

(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.

(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 application of the calculation methods. This Regulation should therefore not apply before the date of application of Regulation (EU) No 575/2013. The rules dependent on the application of Directive 2009/138/EC should begin to apply from the date of application of that Directive. Existing national implementation of the calculation of supplementary capital adequacy require-

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ments 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 insurance sectoral rules should be based on the insurance sectoral rules that apply at the time of that 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 Securities 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 of the European Parliament and of the Council, Article 10 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council and Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council, and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010, Insurance and Reinsurance 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:

CHAPTER I SUBJECT MATTER AND DEFINITIONS

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Article 1 Subject matter

This Regulation specifies the technical principles and technical calculation methods listed in Annex 2 of the Financial Conglomerates Part of the PRA Rulebook and Annex 1R, Chapter 3 of the FCA General Prudential sourcebook for the purposes of the alternatives to deduction referred to Article 49(1) of Regulation (EU) No 575/2013 and for the purposes of calculating own funds and supplementary capital adequacy requirement as provided for in Capital Adequacy Rule 3 of the Financial Conglomerates Part of the PRA Rulebook and rules 3.1.25R to 3.1.31R of the FCA General Prudential sourcebook.

Article 2 Definitions

In this Regulation:

(1) "insurance conglomerate" has the meaning defined in Rule 1.4 (Application and Definitions) of the Financial Conglomerates Part of the PRA Rulebook and the FCA Handbook Glossary of definitions;

(2) "banking and investment services conglomerate" has the meaning in Annex 2 (Table 3) of the Financial Conglomerates Part of the PRA Rulebook and Annex 1R (Table 6) of Chapter 3 of the FCA General Prudential sourcebook.

(3) "Directive 2013/36/EU UK law" means the law of the United Kingdom (or any part of it) which, immediately before IP completion day, implemented Directive 2013/36/EU as that law has effect on IP completion day;

(4) "FSMA" means the Financial Services and Markets Act 2000;

(5) "PRA" means the Prudential Regulation Authority;

(6) a reference to a provision of the PRA Rulebook is to rules made by the PRA under FSMA as amended by rule-making instruments made before IP completion day under FSMA or EU Exit Instruments made at any time under the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018;

(7) a reference to an FCA sourcebook or manual is to rules and guidance made by the FCA under FSMA as amended by rule-making instruments made before IP completion day under FSMA or EU Exit Instruments made at any time under the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018;

(8) a reference to the Solvency 2 Regulations 2015 is to the Solvency 2 Regulations 2015, SI 2015/575 as amended by regulations made under section 8 of the European Union (Withdrawal) Act 2018.

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CHAPTER 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.

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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 Rule 12.1 of the Regulatory Reporting Part of the PRA Rulebook and rules 16.12.32R and 16.12.33R of the FCA Supervision manual shall, when submitting the results of the calculation and the relevant data for the calculation referred to in that Rule to the coordinator, confirm and provide evidence to the coordinator that paragraph 1 is complied with.

Article 5 Sector specific own funds

(1) Own funds referred to 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 other financial sectors.

(2) The own funds referred to in paragraph 1 are own funds that are not the following:

(a) Common Equity Tier 1, Additional Tier 1 or Tier 2 items within the meaning of Regulation (EU) No 575/2013;

(b) basic own-fund items of insurance undertakings or reinsurance undertakings within the meaning of section 417 of FSMA where those items are classified in Tier 1 or in Tier 2 in accordance with Rules 3.1 and 3.2 of the Own Funds Part of the PRA Rulebook.

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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 fund 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 the following:

(a) Common Equity Tier 1 capital as defined in Article 50 of Regulation (EU) No 575/2013;

(b) basic own-fund items where those items may be included in Tier 1 own funds in accordance with Rule 3.1 of the Own Funds Part of the PRA Rulebook and the inclusion of those items is not limited by Article 82 of Regulation (EU) 2015/35;

(c) Additional Tier 1 capital as defined in Article 61 of Regulation (EU) No 575/2013;

(d) basic own-fund items where those items may be included in Tier 1 own funds in accordance Rule 3.1 of the Own Funds Part of the PRA Rulebook and the inclusion of those items is limited by Article 82 of Regulation (EU) 2015/35;

(e) Tier 2 capital as defined in Article 71 of Regulation (EU) No 575/2013; and

(f) basic own-fund items where those items may be included in Tier 2 in accordance with Rule 3.2 of the Own Funds Part of the PRA Rulebook.

(3) Own funds items that are used to meet the deficit shall comply with 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.

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Article 8 Consolidation

In relation to insurance conglomerates, method 1 for calculating the group solvency of insurance and reinsurance undertakings, as laid down in Chapter 11 of the Group Supervision Part of the PRA Rulebook, 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 2 (Table 1) of the Financial Conglomerates Part of the PRA Rulebook and Annex 1R (Table 1) of Chapter 3 of the FCA General Prudential sourcebook, provided that the scope of group supervision under the Group Supervision Part of the PRA Rulebook and the Solvency 2 Regulations 2015 (Part 3) is not materially different from the scope of supplementary supervision under UK legislation implementing Chapter II of Directive 2002/87/EC.

Article 9 Solvency requirement

(1) Where the rules for the insurance sector are to be applied, the Solvency Capital Requirement referred to in Chapters 2 and 3 of the Solvency Capital Requirement - General Provisions Part and Chapter 4 of the Group Supervision Part of the PRA Rulebook including any capital add-on applied in accordance with Regulation 20 of the Solvency 2 Regulations 2015 or under sections 55L or 55M of FSMA shall be considered to be the solvency requirements; for the purpose of the calculation of the supplementary capital adequacy requirements.

(2) Where the rules for the banking or investment services sector are to be applied,

(a) own funds requirements as laid down in Chapter 1 of Title I of Part Three of Regulation (EU) No 575/2013, and

(b) requirements pursuant to that Regulation or to Directive 2013/36/EU UK law to hold own funds in excess of those requirements, including

(i) a requirement arising from the internal capital adequacy assessment process in the Internal Capital Adequacy Assessment Part of the PRA Rulebook and section 2.2 of the FCA Prudential sourcebook for Investment Firms,

(ii) any requirement imposed by a competent authority pursuant to Regulation 34 of the Capital Requirements Regulations 2013 or under sections 55L or 55M of FSMA,

(iii) the combined buffer requirement as defined in Regulation 2 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014, and

(iv) measures adopted pursuant to Articles 458 or 459 of Regulation (EU) No 575/2013

shall be considered to be the solvency requirements for the purpose of the calculation of the supplementary capital adequacy requirements

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

(1) Subject to paragraphs 7, 8 and 9 of Article 14, 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 UK legislation implementing Article 2(1)(l) of Directive 2009/65/EC of the European Parliament and of the Council. The solvency requirements of asset management companies shall be the requirements set out in the UK legislation implementing Article 7(1)(a) of that Directive.

(3) The own funds of alternative investment fund managers shall be calculated in accordance with the UK legislation implementing Article 4(1)(ad) of Directive 2011/61/EU of the European Parliament and of the Council. The solvency requirements of alternative investment fund managers shall be the requirements set out in the UK legislation implementing 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(3) or 15(3) 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 Chapter 3 of Title II of Part Three of Regulation (EU) No 575/2013, an amount equivalent to that change shall be added to the own funds of the financial conglomerate.

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Article 12 Notional own funds and notional solvency requirements for non-regulated financial sector entities

(1) Where a mixed financial holding company has a holding in a non-regulated financial sector entity, the notional own funds and the notional solvency requirements for that entity shall be calculated in accordance with the sectoral rules of the most important sector in the financial conglomerate.

(2) For a non-regulated financial sector entity other than one referred to in paragraph 1, the notional own funds and the notional solvency requirements shall be calculated in accordance with 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.

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CHAPTER III TECHNICAL CALCULATION METHODS

Article 14 Specification of technical calculation under method 1 pursuant to Annex 2 (Table 1) of the Financial Conglomerates Part of the PRA Rulebook and Annex 1R (Table 1) of Chapter 3 of the FCA General Prudential sourcebook

(1) 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 the laws of the United Kingdom that implemented Directive 2002/87/EC and shall take paragraph 5 into account where applicable.

(2) With regard to banking and investment services conglomerates the following treatments shall be applied to unconsolidated investments when calculating the own funds of the financial conglomerate:

(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 from the conglomerate's own funds;

(b) unconsolidated investments, other than those referred to in point (a), held in a financial sector entity which belongs to the insurance sector shall be fully deducted from the conglomerate's own funds in accordance with Article 46 of Regulation (EU) No 575/2013.

(3) Subject to paragraph 2, any own funds issued by an entity in a financial conglomerate and held by another entity in that financial conglomerate shall be deducted from the conglomerate's own funds if not already eliminated in the accounting consolidation process.

(4) 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.

(5) Where an insurance undertaking or reinsurance undertaking within the meaning of section 417 FSMA 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 in accordance with the Valuation and Technical Provisions Parts of PRA Rulebook.

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(6) Where asset or liability values are subject to prudential filters and deductions in accordance with Title I of Part 2 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.

(7) 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 paragraphs 2 and 3.

(8) 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 Section 1 of Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013 shall be considered together.

(9) For the purpose of calculating thresholds or limits, regulated entities in a financial conglomerate which fall within the scope of group supervision according to the Group Supervision Part of the PRA Rulebook and Part 3 of the Solvency 2 Regulations 2015 shall be considered together.

(10) For the purposes of calculating thresholds or limits at the regulated entity level, regulated entities in a financial conglomerate to which neither paragraph 8 nor paragraph 9 applies, shall calculate their respective thresholds and limits on an individual basis according to the sectoral rules of the regulated entity.

(11) When summing the relevant sectoral solvency requirements there shall be no adjustment other than as required by Article 11 or as a result of adjustments to sectoral thresholds and limits pursuant to paragraph 7.

Article 15 Specification of technical calculation under method 2 pursuant to Annex 2 (Table 2) of the Financial Conglomerates Part of the PRA Rulebook and Annex 1R (Table 2) of Chapter 3 of the FCA General Prudential sourcebook

(1) Where the own funds of a regulated entity are subject to a prudential filter pursuant to the relevant sectoral rules, one of the following treatments shall apply:

(a) the filtered amount, being the net amount that shall be taken into account in the calculation of own funds of participations, shall be added to the book value of participations in accordance with Annex 2 of the Financial Conglomerates Part of the PRA Rulebook and Annex 1R of Chapter 3 of the FCA General Prudential sourcebook, if the filtered amount increases regulatory capital;

(b) the filtered amount referred to in point (a) shall be deducted from the book value of participations in accordance with Annex 2 of the Financial Conglomerates Part of the PRA Rulebook and Annex 1R of Chapter 3 of the FCA General Prudential sourcebook, if the filtered amount decreases regulatory capital.

(2) For banking-led or investment-led financial conglomerates, significant investment in a financial sector entity within the meaning of Article 43 of Regulation (EU) No 575/2013, which belongs to the insurance sector and which is not a participation shall be fully deducted from the own funds items of the entity holding the instrument, in accordance with sectoral rules applicable to that entity.

(3) 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.

(4) The calculation of supplementary capital requirements shall be carried out in accordance with the formula in the Annex.

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Article 16 Specification of circumstances for the use of a combination of methods 1 and 2

(1) Competent authorities may only allow the application of a combination of method 1 and method 2 as referred to in the Financial Conglomerates Part of the PRA Rulebook and method 3 as referred to in section 3.1 of the FCA General Prudential sourcebook in either of the following circumstances:

(a) it is not reasonably feasible to apply either method 1 as referred to in Annex 2 (Table 1) of the Financial Conglomerates Part of the PRA Rulebook and Annex 1R (Table 1) of Chapter 3 of the FCA General Prudential sourcebook to all entities or method 2 as referred to in Annex 2 (Table 2) of the Financial Conglomerates Part of the PRA Rulebook and Annex 1R (Table 2) of Chapter 3 of the FCA General Prudential sourcebook to all 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.

(2) Either method 1 or method 2 shall be used by all regulated entities in a financial conglomerate which are not referred to in paragraph 1.

(3) The application of a combination of method 1 and method 2 in relation to a financial conglomerate shall be consistent over time.

CHAPTER IV FINAL PROVISIONS

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Article 17 Entry into force

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

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

Signature

01/01/2021

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

01/01/2021

Done at Brussels, 21 January 2014.

01/01/2021

For the Commission

01/01/2021

The President

01/01/2021

José Manuel BARROSO

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ANNEX Calculation methodology for Method 2 pursuant to Annex 2 (Table 2) of the Financial Conglomerates Part of the PRA Rulebook and Annex 1R (Table 2) of Chapter 3 of the FCA General Prudential sourcebook

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

$$scar = \sum_{i=1}^{Gfin} x_i\,(OF_i) - \left(\sum_{i=1}^{Gfin} (REQ_i) + \sum_{j=1}^{G} (BV_j) \right)$$

$scar \geq 0$

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:

	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
	the sum of the solvency requirements (REQi) for each regulated and non-regulated financial sec tor entity (i) in the group (G); the solvency requirements shall be calculated in accordance with the relevant sectoral rules; and the book value (BVj) 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 the UK legislation implementing Article 6(4) of Directive 2002/87/EC.

The difference shall not be negative.