

Insurance Europe

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1. Do you agree with the suggested scope of the guidelines with respect to the mandate given under Article 11 of the Directive 2002/87/EC (FICOD)?

Insurance Europe welcomes the possibility to comment on this public consultation and supports the efforts of the ESAs to converge the supervisory practises on financial conglomerates in Europe. Consistent and harmonised requirements on coordination arrangements of supervisory colleges might prove to be useful in this respect.

Insurance Europe has no direct comments on the scope of the Guidelines, but finds them helpful in seeking to a convergent approach and consistency of the supervisory methodology and coordination arrangements for financial conglomerates.

However, we do have three concerns that can be related to scope. Firstly, the consultation paper remains silent about an important aspect of financial conglomerates supervision, which is the future cooperation between the ESAs and the European Central Bank (ECB). Article 4 Section 1 (h) of Council Regulation 1024/2013/EU empowers the ECB to participate in the supplementary supervision of a financial conglomerate in relation to the credit institutions included in it and to assume the tasks of a coordinator where the ECB is appointed as the coordinator for a financial conglomerate in accordance with the criteria set out in relevant Union law.

Given that the ECB shall exercise its tasks in close cooperation with the ESAs (Article 3 of Council Regulation 1024/2013/EU) and the assignment to develop technical standards, guidelines and recommendations should rest with the EBA respectively the ESAs (Recital 32 of Council Regulation 1024/2013/EU), clarification is needed how the ECB and its special role should be integrated in the coordination agreements. This relates both to the allocation of tasks and responsibilities within the college and in particular to the cooperation between the supervisory authorities involved if the ECB acts as coordinator for the financial conglomerate.

We therefore encourage to ESAs to engage in a dialogue with the ECB in order to discuss the implications of an ECB-involvement. From an insurance perspective, it is paramount that all authorities are aware of the restrictions of ECB supervisory powers with regard to insurance undertakings as part of the conglomerate, no matter whether an insurance-led or a bank-led conglomerate is concerned. Council regulation 1024/2013 limits the exercise of supervisory powers of the ECB on credit institutions. This is in line with Article 127 (6) of the Treaty on the Functioning of the European Union (TFEU) which actually prevents the Council from delegating powers relating to the prudential supervision of insurance undertakings to the ECB. It needs to be ensured that the ban on granting supervisory powers to the ECB according to Article 127 (6) TFEU is not violated. Therefore, the guidelines should explicitly clarify that the decisions taken by the ECB, especially in its capacity as coordinator, must not affect the insurance entities belonging to the financial conglomerate.

Secondly, these Guidelines propose National Competent Authorities (NCA) to amend their legal framework in order to be compliant (page 7). This goes beyond Article 16 of the ESA's Regulations which specifies that Guidelines should be non-binding and remain at the discretion of the NCA if and how to apply them at national level (ie comply-or-explain mechanism).

Thirdly, these Guidelines differ in a number of important details from EIOPA's Guidelines on the Operational Functioning of Colleges of Supervisors (EIOPA's Colleges Guidelines - currently also under consultation). These differences are detailed below in response to a later question - but our strong view is that these Guidelines should be changed to align with the better EIOPA version and should include a general provision that sectoral Guidelines take precedent.

2. Should the mapping process identify any other kind of undertakings and participations held by the parent undertaking or any of the subsidiaries of a financial conglomerate, apart from those described in paragraph 16?

NA

3. Do you consider appropriate the minimum number of meetings described in paragraphs 49 and 50?

We do not have a problem with number of meetings suggested, but we find it less flexible considering that at least one physical meeting should be organised per year as set out in paragraph 49. This paragraph is stricter than the corresponding EIOPA's Colleges Guidelines. It should be left at the discretion of the College to decide the meeting frequency and format suitable for how they perform their tasks and supervision. The meeting frequency and format should ensure that regular exchange of information is shared to improve the understanding of the risk situation the conglomerate is operating under.

4. Do you agree with the analysis of the impact of the proposals in this CP? 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?

The analysis of impact provided is very high level and therefore difficult to comment on. However, we note that no analysis seems to have been done on the cost of additional/different requirements from the EIOPA Colleges Guidelines. Had this been done we believe it would have provided evidence that the EIOPA text was adequate and the costs of differences unjustified.

Insurance Europe notes that the guidelines aim to supplement the functioning of sectorial colleges. At the same time, EIOPA is currently consulting extensive guidelines on the operational functioning of supervisory colleges set up in accordance with Directive 2009/138/EC. For insurance-led conglomerates it is very important that these colleges won't be overburdened with procedural requirements which are likely to impede the effectiveness and efficiency of supervisory processes.

Insurance Europe believes that the EIOPA's Colleges Guidelines sufficiently cover the requirements and that the Guidelines on FICOD should be aligned accordingly. Specific points where the FICOD Guidelines should align are:

- Requesting at least one physical meeting annually (as described in question 3 where we highlight that EIOPA's guidelines allow the college to determine if a physical meeting is required or if it can be held by conference call.)
- Requesting an annual review of the conglomerate mapping as described in paragraph 14 (EIOPA's guidelines require a review of the mapping following modifications to the group structure)
- Paragraph 42 sets out that further information in addition to the information already collected through existing reporting channels can be requested by the coordinator and the supervisor of the conglomerate. This introduces potentially unnecessary reporting requirements and it should be clearer that the reporting requirements for the insurance part of a financial conglomerate should be limited to what is necessary for supervising the conglomerate.

Therefore, we kindly request the ESAs to investigate synergies between the guidelines in order to avoid overlapping or even conflicting requirements.

Finally, it should be acknowledged that Solvency II is a highly risk-based regime containing key elements warranting that insurance groups are appropriately capitalised. Hence, Guidelines on FICOD should not create supplementary supervision, nor add additional burdens and costs for insurance undertakings than those imposed by the Solvency II Directive.

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