

IRSG meeting on 24 May 2012

EBA, EIOPA and ESMA's joint CP on the proposed response to the call for technical advice from the European Commission on the fundamental review of the Financial Conglomerates Directive

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I. The Financial Conglomerates Directive

- 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 – FICOD
- Financial conglomerates are financial groups that are active in one or more country and operate in both the insurance and banking business. They are often large and complex. They are often of systemic importance, for example due to their size.
- FICOD requires supervisors to apply supplementary supervision on conglomerates, in addition to the specific banking and insurance supervision.
- In 2011, 58 groups have been identified as financial conglomerates with the head of group in an EU/EEA country. The list of identified Financial Conglomerates is published on all three ESA websites.



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II. Quick fix review of the FICOD

- In light of the financial crisis the Commission evaluated the effectiveness of FICOD in **2008**.
- Supplementary supervision, as stipulated in the original Directive, could not be carried out on certain financial groups because of their legal structure.
 - As in some cases, national financial supervisors were left without the appropriate tools because they had been obliged to choose either banking or insurance supervision under the sector-specific directives or supplementary supervision under the FICOD as the definitions for banking and insurance holding companies in the sector-specific directives and for mixed holdings in the Conglomerates Directive were mutually exclusive.
- **COM “Quick Fix” review in Dec 2011 (Directive 2011/89/EU)**
 - Both sector-specific (banking and insurance) supervision and supplementary supervision can be applied on the conglomerate's parent entity, also if it concerns a holding company. Banking supervision therefore remains applicable even if the banking group acquires a significant stake in an insurance business. By the same token, insurance supervision remains applicable if the insurance group acquires a significant stake in a banking business.

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III. Call for Advice on the Fundamental Review of the FICOD

- Commission issued in April 2011 in parallel to the quick fix review the **Call for Advice (CfA)** no. 4 on the **fundamental review** of the FICOD addressed to the **Joint Committee**, Sub Committee on Financial Conglomerates (**JCFC**).
- EBA, EIOPA and ESMA launched on 14 May 2012 a three 'month **public consultation** on the proposed response to the call for technical advice from the European Commission on the fundamental review of the Financial Conglomerates Directive ("the FICOD") – CP/JC/2012/01
- This consultation covers three **broad areas**: the scope of application, the group wide internal governance requirements and sanctions and supervisory empowerments
- The Joint Committee issued a **series of recommendations** for the review of the FICOD, including the widening of the scope of supervision, addressing requirements and responsibilities to a designated entity within the financial conglomerate and the framework of supervisory powers provided by the FICOD.



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- **Question 1 CfA: What should be the perimeter of supervision, when a financial conglomerate is supervised on a group wide basis?**
 - **Recommendation 1: The Perimeter of supervision should be enlarged** to ensure a more thorough group wide supervision and avoid possible regulatory arbitrage
 - Definition of financial sector [Article 2 (8) FICOD] should be enlarged to include **insurance ancillary services undertakings** and **all special purpose vehicles/entities**
 - ESAs have assessed whether **Institutions for Occupational Retirement Provision (IORPs)** should be included as part of a financial conglomerate and are mindful of the national specificities of IORPs. Stakeholder views are welcome on the proposed options:
 - **Option 1: Include IORPs** within the definition of “financial sector”
 - **Option 2: Maintain the status quo**; such that IORPs would not be included within group wide supervision at cross sectoral level

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– **Recommendation 2:** Mixed financial holding companies (MFHCs), even if unregulated, should be made subject to supplementary supervision

– **Recommendation 3:** Companies undertaking solely industrial activities (with no financial services activity at all), should not be subject to direct financial supervision.

However supervisors should have the ability to access relevant information from such Mixed activity holding company (MAHC) and Mixed activity insurance holding company (MAIHC) within its **supervisory tool kit:**

- **Tool 1** – To require the creation of an **intermediate financial holding** which is responsible for all the entities carrying out financial activities
- **Tool 2** - To designate one single “**point of entry**” **at the top of the unregulated entities** as a reference for the supervisors (e.g. a specific team or division or a member of the Board of the parent entity).
- **Tool 3** – To designate a specified **regulated entity as point of entry** which does not necessarily need to be the top entity of the entire financial conglomerate.



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- **Question 2 CfA:** Given your experience and expertise, which legal entity in a conglomerate should be responsible and qualify for compliance with group wide requirements, i.e. which legal entity should be the responsible parent entity?
 - **Recommendation 4:** The European Commission should identify and define **an ultimate responsible entity** for the financial conglomerate according to the following **minimum criteria:** control, the dominant entity from the market’s perspective (market listed entity) and the ability to fulfil specific duties towards its subsidiaries and its supervisor.
- **Question 3 CfA:** Given your supervisory experience and expertise, which requirements should be imposed on this qualified parent entity in the context of group wide supervision?
 - **Recommendation 5:** This **ultimate responsible entity should be responsible for compliance** with group wide requirements. The European Commission should explicitly require the ultimate responsible entity to have a **coordinating and directing role over the other entities of the conglomerate.**



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- **Question 4 CfA:** Given your supervisory experience and expertise, which incentives (special benefits or sanctions) would make the enforcement of the group wide requirements more credible?
 - **Recommendation 6:** In order to ensure that the group wide requirements are enforceable, the European Commission should **develop an enforcement regime towards the ultimate responsible entity** and its subsidiaries. This would imply a **dual approach** with enforcement **powers towards the top entity** for group wide risks **and towards the individual entities** for their respective responsibilities. Corrective measures should be directed towards the entity that is responsible for the respective breach.



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- **Recommendation 7:** In any case, the supervisor should have a minimum set of measures, consisting of informative and investigative measures, at hand (see Recommendation 3). Supervisors should be able to **administer sanction measures addressed at the MAHC or MAIHC**, where this entity does not provide the requested information. Moreover, when (under Tool 1, Recommendation 3) an intermediate financial holding company has been established, supervisors should be able to administer sanction measures at this **intermediate financial holding company**.
- **Question 5 CfA:** When reflecting upon this advice, would supervisors in Europe need other or additional empowerment in their jurisdictions?
 - **Recommendation 8:** The supervisor’s actual use of this tool kit should be enhanced. Further a minimum set of enforcement measures should be achieved by the **ESAs developing guidelines** or by being asked to develop **binding technical standards** for a **common reporting scheme on risk concentrations** and **intra group transactions**, (including the possible development of guidelines for quantitative limits under Article 7 (3) and 8 (3) FICOD).



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- **Annex H - Overview of Questions for Consultation**

- To assist the ESAs to perform an assessment of the impacts associated with the proposals discussed in this paper, the ESAs would appreciate stakeholders' responses to the following questions.
- Q1: How many additional conglomerates would be in the scope of the FICOD if
 - a. IORP Pension funds were to be included?
 - b. SPV/SPEs were to be included?
- Q2: What characteristics would these new financial conglomerates have (size, type etc...)?
- Q3: What would be the scale of additional capital requirements (and the differences in the quality of capital?) if
 - a. IORP Pension funds were to be included?
 - b. SPV/SPE were to be included?
- Q4: Please provide some information on the potential additional compliance costs were your group to be identified as a conglomerate under these proposals.
- Q5: Please could national supervisors provide an estimate of the additional resources required were the scope of supervision to be enlarged as envisaged in this proposal.

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- Consultation process:
 - **Comments** can be submitted **by 13 August 2012 cob** to the EBA, EIOPA and ESMA, using the template provided, by email to:
joint-committee@eba.europa.eu, jointcommittee@eiopa.europa.eu and joint.committee@esma.europa.eu
- by indicating the reference "JC/CP/2012/01" on the subject field.
- All contributions received will be published following the close of the consultation, unless otherwise requested.
- Following the public consultation, the ESAs will finalise their response to the Call for Advice and submit to the Commission by early autumn 2012.



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THANK YOU FOR YOUR ATTENTION

We are looking forward to receiving your comments!



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