



EUROPEAN COMMISSION  
Directorate General Internal Market and Services

Banking and financial conglomerates

## ***Feedback Document***

# **Consultation regarding the Review of the Financial Conglomerates Directive**

## **1. INTRODUCTION**

In response to the targeted consultation on the review of the Financial Conglomerates Directive (FICOD), the Commission received 17 contributions from stakeholders. All responses were from stakeholders that were registered in the Commission's stakeholders' register. One response reflected the replies of 6 groups, one of which had also replied on an individual basis. The responses included the view of 18 conglomerates, 1 authority, 2 associations, 1 union, 1 research centre. Seven stakeholders requested their entire submissions to be treated confidentially. The other stakeholder responses have been published on the website of the European Commission: [http://ec.europa.eu/internal\\_market/consultations/2009/fcd\\_review\\_en.htm](http://ec.europa.eu/internal_market/consultations/2009/fcd_review_en.htm).

Of the 17 stakeholder contributions, in terms of regions, 2 contribution was received from EU-wide associations, 5 from Germany (9 groups), 2 from France, 3 from Sweden, 1 each from Austria, Italy, the Netherlands and UK, and 1 from Norway; 1 national authority profited from this stakeholder consultation to inform the Commission of their views on the matter.

The number of responses to this targeted consultation is in line with the number of its main target groups, financial conglomerates, which are a limited group of financial institutions, and the technical nature of the questions which the European Commission needed to ask for this review.

## **2. GENERAL FEEDBACK**

The initiative was broadly welcomed by the respondents. They recognized the major problems, as listed below, as well as the Commission Services suggestions to solve them:

- the applicability of sectoral top level provisions of the banking and insurance directives at the level of Mixed Financial Holding Companies (MFHCs);
- clarity about the inclusion of asset management companies in the scope of supplementary supervision;
- allowing a more risk-based identification of conglomerates,
- clarity about the treatment of participations in supplementary supervision.

However, there were divergences concerning the Commission not taking up the main concern of the industry, namely the cross-sectoral alignment in the definition of capital. Since the Capital Advice of the Joint Committee on Financial Conglomerates (JCFC) in April 2008, the Commission has been waiting for a good timing to deal with this problem. On their part, Member States gathered in the European Financial Conglomerates Committee (EFCC) have asked to wait until the sectoral debates over banking and insurance reach their conclusion. The part of industry responding to the present consultation failed to understand the request for this delay.

The Commission Services used this consultation to double-check whether the problems identified were substantial, and whether further distinctions could be identified. One problem that appeared to be smaller than initially anticipated was whether the top level

holding company, based in a MS different to the one where the highest level license authorisation was granted, would create a coordination problem between the supervisory authorities of the two MS concerned. Moreover, a further distinction between proprietary trading and non-proprietary trading of financial conglomerates' asset management companies could not be made, insofar as respondents to this consultation could demonstrate. Finally, the secondary nature of the participation problem was confirmed.

Finally, the Commission Services used this consultation to get an idea of possible future items in the area of financial conglomerates regulation. The responses broadly rejected to consider remuneration policies in a cross-sectoral manner. They supported initiatives in the areas of capital, i.e. the consistency of eligibility provisions as mentioned above, as well as considering non-regulated entities affecting financial groups' risk profiles. With respect to initiatives for more transparency of group structures (referring to the political call for living wills), some respondents replied that this supervisory power already exists, in Article 9 and 12 of the FICOD, as well as Article 7 and 22 of the CRD, although they did not observe supervisors applying this power.

### 3. SPECIFIC COMMENTS

In this section we provide a more detailed description of the feedback, broken down by problem area. For each question we provide the relative answer figures and their analysis. If numbers in the general questions do not add up to 17, not all respondents replied to that specific question. If the specific conglomerate-related questions do not add up to 18, not all conglomerates replied to the question.

#### 3.1. Transparency of group structures, scope and non-regulated entities

##### Question 1

**For which of the following a review with respect to the transparency of group structures would be justified? Please select all that apply and explain why.**

Yes, for all conglomerates	4
Yes, for all conglomerates larger than 100 billion euro total assets	1
Yes, for all groups, banks or insurers or conglomerates	11
Yes, for all groups larger than 100 billion euro total assets	1
No, I do not think that a review of transparency of group structures is justified	2

##### Analysis

The general steer was that transparency of group structures is a very important issue, since the existing power of supervisors is hardly being used. Respondents stressed

Articles 7 and 22 of the CRD , as well as Articles 9 and 12 of the FICOD, that allow supervisors to require the full transparency of conglomerate group and governance structures. According to most submissions, this power should be applied to all groups, regardless of their business combinations.

Those who replied "no" or "yes" for "all groups/conglomerates larger than 100 billion euro total assets" referred to proportionality in supervision in relation to the severity of the group structure problem, even though they supported the general concept. Groups with less licenses or legal entities, e.g. less than 200 legal entities, may in their view not pose a severe transparency problem.

## **Question 2**

**Do you think that a more in-depth investigation is justified with respect to the supervisory scope of supplementary supervision, especially in relation to the non-regulated parts of financial conglomerates? Please explain why.**

Yes: 9

No: 6

No reply: 2

## **Analysis**

Those who regarded an in-depth investigation of the supervisory scope as justified, did so because of unknown risk exposures within non-regulated parts of the FICOD, such as double gearing and the interaction within and among groups in the market for hedge funds and pension funds. Not only would respondents support an inclusion of hedge fund- and pension fund- related activities within existing conglomerates, but also a clear supervisory framework for these kinds of actors which is as prudent as the existing frameworks for banks and insurers.

Those who did not favour this investigation would confine the exercise to only those that pose a risk to the financial entities, especially the so-called Special Purpose Vehicles (SPVs, non-regulated legal entities meant mainly to "store" certain assets). Also, these respondents would advise to avoid extra reporting burdens as a sole consequence of this additional supervisory power inquiring about risks in the non-regulated parts of the group. As an additional suggestion, some respondents observed that liquidity supervision, relating to several entities across the group and across countries, was lacking in the European supervisory framework.

## **Question 3**

**In your opinion, would the debates on the definition of capital in the banking and insurance sector respectively, justify a more in-depth investigation of the cross-sectoral perspective? Please explain why.**

Yes: 11

No: 2

No reply: 4

## Analysis

Most respondents were quite explicit in their plea for a coordinated consultation of the changes to the capital eligibility definition in the CRD and Solvency II respectively. They would ask the Commission to prevent a regulatory situation where conglomerates are affected negatively by different regulatory requirements in the banking and insurance sectors. Cross-sectoral differences in the area of definition of capital, not justified by sectoral specificities, create distortions to competition across sectors, or render the underlying conceptual framework of the above sectoral directives incoherent. It was especially the different treatment of participations which the respondents regard unnecessary, but also details in the definition of eligible hybrid instruments, and how those are categorized (i.e. tier 1, 2, 3) in the CRD and Solvency II. This was worrying, others added, because allowing internal models as a basis for capital requirements assumed that capital in the banking and in the insurance silo is comparable, whereas it actually is not.

More particularly, the current regulatory environment puts banks which have participations in insurance companies at a disadvantage compared to insurance companies investing in banks. This is due to the need for banks to deduct the full book value of these participations from their capital (Article 59 & 60 CRD) in case they hold more than 10% of the insurance equity whereas insurance firms have to apply the same rule only when they own more than 20% of the bank capital. As observed in the Joint Committee on Financial Conglomerates' (JCFC) « Recommendations to address the consequences of the differences in sectoral rules on the calculation of own funds of financial conglomerates » published in April 2008, « there is no explicit reason in the texts why the two thresholds for holding a banking institution are different whether the holder belongs to the banking or the insurance sector.<sup>1</sup>»

On the other hand, the standardisation of a definition of capital may be counterproductive and lead to unforeseen and unintended consequences, respondents would add. The only differences in capital definition that should be allowed would proceed from sectoral specificities and the nature of risks carried by either the banking industry or the insurance industry.

Those who responded "no" argued that in the light of the huge regulatory agenda all stakeholders are facing at the moment, discussions of a more theoretic nature like this one should be avoided. In general, sector specific instruments may remain to be eligible in the broader definition. Copying banking rules to insurance would not be appropriate, but a discussion on consistency would be.

In any case, one respondent suggested that if a definition of capital in the banking or the insurance sector changes, an impact study should be carried out for financial conglomerates. Preferably, a change in the capital definition should be carried out for banking and insurance at the same time in a harmonized manner, and the Joint Committee should assess consistency.

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<sup>1</sup> [http://www.ceiops.eu/media/docman/public\\_files/consultations/consultationpapers/TWCFCAdvice.pdf](http://www.ceiops.eu/media/docman/public_files/consultations/consultationpapers/TWCFCAdvice.pdf)

#### **Question 4**

**With respect to the group wide remuneration policies in financial conglomerates, would you regard it as useful to consider the compatibility of these policies across the banking and insurance sectors within the conglomerate?**

Yes: 6

No: 8

No reply: 3

#### **Analysis**

The replies showed many different opinions. Some would appreciate a level playing field, and as means to avoid perverse incentives, to enforce group-wide consistency of integer policies, still recognizing that different activities may justify different remuneration policies. Others would defend that remuneration policy should be left to the social partners, not the Commission, according to Article 153(5) TFEU. A few reminded that compatibility with prudent policies is not equality.

### 3.2. Top level supervision

#### Question 5

Are you identified as a financial conglomerate, either waived (Art 3(3) FICOD) or not?

Yes, waived.	
Yes, not waived.	17 groups responded which are currently identified and not waived
No, I'm not a financial conglomerate.	1 group
None of the above.	5 other stakeholders responded

Questions 6 to 10 only apply to 15 of the 18 groups above, who responded to them.

#### Question 6

Please indicate the size of your banking and insurance businesses in terms of total assets and gross premiums, respectively, as of 30 June 2009.

Banking business total assets (BA, all authorized banking business types):

BA < €10 billion	Groups 10, 11
€10 billion < BA < €100 billion	Groups 3, 8, 9, 12, 13
€100 billion < BA < €500 billion	Groups 2, 6, 7
BA > €500 billion	Groups 1, 4, 5
Decline to state	Group 14, 15

Insurance total gross premiums (IP, all authorized insurance types): Group 4 missing below. Include or explain.

IP < €5 billion	Groups 3, 5, 9, 10, 11
€5 billion < IP < €10 billion	Groups 1, 2, 4, 12
€10 billion < IP < €25 billion	Group 6
IP > €25 billion	Groups 7, 8, 13
Decline to state	Group 14, 15

### Question 7

Please indicate the number of authorized legal entities in your banking (incl. investment) and insurance (life, non-life, re-insurance) businesses, your conglomerate held in Q2 of 2009.

#### Banking

Less than 10	Groups 3, 9, 10, 11
Between 10 and 99	Groups 2, 4, 7, 8, 12, 13
Between 100 and 199	Group 1
200 or more	Groups 5, 6
Decline to state	Groups 14, 15

#### Insurance

Less than 10	Groups 3, 5, 9, 10, 11, 12
Between 10 and 99	Groups 1, 2, 4, 6, 7
Between 100 and 199	-
200 or more	Groups 8, 13
Decline to state	Groups 14, 15

### Question 8

Your (identified; waived or not) conglomerate level is:

MFHC	Groups 3, 4, 8, 12, 13
Regulated banking entity	groups 1, 2, 5, 6, 7, 9
Regulated insurance entity	Groups 10, 11, 14

### Question 9

**The level of your group, where capital for the group is attracted and where chief officers (CEO, CFO, CRO, COO, etc) are responsible for group-wide policies and strategic decisions, is organized at:**

the MFHC	Groups 1, 3, 4, 8, 12, 13
the highest sectoral regulated entity level	Groups 2, 5, 6, 7, 9, 10, 11, 14
otherwise. Please specify:	

### Question 10

**The entity referred to in Question 9 is:**

in the same member state as the highest level regulated entity,	All (group 1 to 15)
in a different member state,	
outside the European Union	

### Analysis

The Services wanted to get an idea of the severity of the MFHC problem as identified by the JCFC. It appears that, for those who responded to the consultation, the MFHC problem indeed materialises for the largest groups. Although there are only a few of them, their total size is significant, and a solution to the problem would be justified. A related problem could have been a coordination problem, if the MFHC would be situated in a different Member State than the Member State where the highest level authorisation would have been given. This problem could not be confirmed by the responses.

### Question 11

**Do you want to share any other relevant information with the Services regarding the supervision problems at the top level?**

Respondents took the opportunity to reveal their ideas under this heading:

- Associations explicitly called for allowing sectoral top level provisions to be made applicable to MFHCs;
- Some specifically requested to reflect diversification between sectors;
- Several pleaded for a harmonization of the capital treatment of participations;
- Some raised the issue of regulatory arbitrage by gaming with group structures and plead for substance over form. The regulatory gaps in the system still invite the

allocation of certain activities to e.g. non-regulated entities in the USA, thereby placing those activities and their risks outside the supervisory scope.

### 3.3. Identification process

#### 3.3.1. Asset Management Companies

#### Question 12

**Please indicate the relative importance of the Asset Management Companies (AMCs) in your group in terms of revenue** Groups 2, 14 and 15 missing below in Q12, 13. Please include in table or explain in footnote,

<1% of total gross revenue	Groups 3, 9, 10, 11
<5% of total gross revenue	Groups 4, 5, 7, 8, 12, 13
>5% of total gross revenue	Groups 1, 6
Not applicable, no answer	Groups 2, 14, 15

#### Question 13

**Do these AMCs serve**

The banking business only	Groups 5, 6, 9
The insurance business only	-
Both of the above	Groups 1, 3, 4, 7, 10, 11, 12, 13
If both, as separate entities for each sector	-
If both, as entities serving both sectors	Groups 1, 3, 4, 7, 10, 11, 12, 13
None of the above	2, 8, 14
Do not know	15

#### Question 14

**If AMCs are serving both the group itself (proprietary business, risk for the group) and external clients (non-proprietary business, risk for the client), do you separate the two types of business in separate legal entities?**

Yes: 1

No: 11

No reply: 3

### Question 15

**If you separate proprietary (risk for the group itself) from non-proprietary (risk for the client) business of your AMCs, could you indicate their relative importance in terms of revenue (choose the closest answer)?**

10 prop / 90 non-prop (most risks of asset management born by clients)	All groups that replied to the AMC questions i.e. groups 1 to 13
50 prop / 50 non-prop	
90 prop / 10 non-prop (most risks of asset management born by conglomerate itself)	

### Question 16

**Would you like to share any other relevant information regarding the inclusion of AMCs? Could you, for example, illustrate how you make the distinction between proprietary and non-proprietary business in an operational and legal sense, such as how do you allocate resources to the two types of business?**

Some note that total assets under management do not pose any risk to the conglomerate if held for 3<sup>rd</sup> parties only, but they cannot suggest how to make that distinction in practice.

#### Analysis

The Services had followed up several pleas during the public hearings which claimed that not all asset management activities added risks to the conglomerate. First, the Services needed to know the materiality of this problem, which appears to be rather low from the replies in this sample. Second, the Services meant to gather material in order to explore the distinction between proprietary and non-proprietary business, but these responses appear to confirm that asset management business is conducted for the group as a whole, both types of business included in the same entity.

#### 3.3.2. Identification process

### Question 17

**Which of the following indicators could be used in addition to or instead of 10% of solvency and of total assets in the other sector to make the identification process of a financial conglomerate more risk-based? Select all that apply:**

	In addition	Instead	Not
Income structure	7		
Off balance sheet activities	3		2
Relative size of resp. businesses in their resp. markets	3		3

business structure, relations between the resp. sectors within the group	1		3
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Other, please specify: Allocated capital to specific business/sector; Contribution to earnings of specific business/sector

### Analysis

The responses did not result in a clear support for certain alternative indicators, other than those already covered in Article 3(5) FICOD.

### Question 18

**Do you think that bancassurance groups whose smallest sector is smaller than 6 billion euro *and* smaller than 10% of its solvency and of total assets would never be materially exposed to group risks?**

Yes	4
No	9 (!)
Do not know	2

### Analysis

Without being asked, several respondents note that all groups can be exposed to group risks, even the smallest group with one banking license only, if for example structured within several non-regulated high-risk special purpose entities. These responses suggest that the FICOD should not exclude groups based on their small size as a rule.

### Question 19

**Would you like to share any other relevant information with respect to the identification process of financial conglomerates?**

Respondents asked the Commission to develop clearer wording with respect to the proportionality of including indirect share holdings, which relates to the definition of capital and the treatment of participations when calculating a conglomerate total solvency ratio. Also, respondents suggested updating the quantitative threshold for inflation, i.e. from 6 billion to 10 billion euro.

## 3.4. The treatment of participations in supplementary supervision

### Question 19

**Please indicate the absolute and relative size of the aggregate of minority participations (regulated and non-regulated) MP in your conglomerate in terms of total assets?**

MP < 1%	7
1% < MP < 5%	2
MP > 5%	2

### Question 20

**Please indicate how much of these minority participations are holdings of more than 10% but less than 20%?**

< 20%	8
20% < 10-20MP < 50%	1
10-20MP > 50%	1

### Analysis

As the JCFC had previously done, both for the Capital Advice early 2008, and for the Review Advice, early 2009, also the Commission Services wanted to double-check how material the problem of minority participations actually was, especially since the industry repeatedly complains for discriminatory treatments when comparing the three relevant directives. Like two earlier impact assessments, the sample of this consultation also does not show that the problem is material. Although several individual cases are known to be problematic, the materiality of this problem for the sector as a whole can still not be proven.

### 3.5. GENERAL QUESTIONS

If your conglomerate is currently subject to the FCD and will remain subject to it,

#### Question 21a

**Please, if possible, estimate likely impacts in terms of incremental benefits (including capital and information provision-related costs) for your organisation. Please assess separately the most material impacts by referencing to the relevant articles of the FICOD which matter to your organisation**

Among the answers, the following were mentioned: the advanced close collaboration between insurance and banking parts of the group, the improvement of internal governance at conglomerate level, as well as the pressure of market discipline and the presence of rating agencies, considering the group as a conglomerate, even though the supplementary supervision itself would be limited to a periodical report to the supervisor with quantitative data.

#### Question 21b

**Please, if possible, estimate likely impacts in terms of incremental costs (including capital and information provision-related costs) for your organisation (You might**

**expect costs of improved supplementary supervision in the updating of reporting lines, or adapting internal governance structures, or other.)**

Respondents noted that any regulatory change brings costs of the change project, or initial costs of changing reporting formats etc. Directly attributable costs may be a new shared IT system, which are likely to cost below 1 million euro.

**Question 22**

**What would be the implications, if any, for the competitiveness of your businesses in the EU and internationally?**

Respondents would expect several implications on competitiveness, such as a potential negative impact if Member States do not implement the directive in a consistent manner. Main costs come from distorted competition caused by the inconsistent transposition of Articles 59 and 60 CRD (treatment of participations) across member states. The only solution to this distortion, these respondents argued, would be the removal of the national discretion in Articles 59 and 60 CRD.

Under this question, a few warned for an over-reaction by regulators aimed at punishing the continued use of double-leverage like instruments. More capital *per se* would be no panacea.

On the other hand, a potential positive impact is experienced with the visibility of (large, identified) conglomerates in the market, which may enhance trust. Better transparency could be regarded as an advantage for the regulated sectors, some claim, and in the long term also for investors and customers; this scenario would have to be evaluated against increased administrative requirements.

**Question 23**

**What would be the impact for your clients?**

An obvious reply to this question was that extra supervision will imply more expensive products and less profitability, but more important, stakeholders noted that clients should not be affected by this directive. Since clients choose products and are not aware of the difference between originators, banks, insurers or conglomerates, regulators should be aware that different directives should not have different impacts on the market.

**If your conglomerate is currently subject to supplementary supervision under the FICOD and it were excluded from such supervision,**

**Question 24a**

**What would be the likely impacts in terms of incremental cost savings (including capital and information provision-related cost savings) for your organisation? 18**

Reported incremental cost savings varied from 10.000 euro to 500.000 euro

**Question 24b**

**What would be the likely impacts in terms of incremental costs (including risks) for your organisation?**

If waived from supplementary supervision, groups may re-allocate their capital.

**Question 25**

**What would be the implications, if any, for the competitiveness of your businesses in the EU and internationally?**

This question did not get any answers.

**Question 26**

**What would be the impact for your clients?**

**If your conglomerate is currently not subject to supplementary supervision under the FICOD, but would become subjected to it, were the financial conglomerate identification process modified,**

**Question 27a**

**Could you please, if possible, estimate likely impacts in terms of incremental benefits (including capital and information provision-related costs) for your organisation? Please assess separately the most material impacts by referencing to the relevant articles of the FICOD which matter to your organisation.**

**Question 27b**

**Could you please, if possible, estimate likely impacts in terms of incremental costs (including capital and information provision-related costs) for your organisation? Please assess separately the most material impacts by referencing to the relevant articles of the FICOD which matter to your organisation.**

**Question 28**

**What would be the implications, if any, for the competitiveness of your businesses in the EU and internationally?**

**Question 29**

**What would be the impact for your clients?**

The questions 26, 27, 28 and 29 were not answered, because the stakeholders in the sample were all either identified conglomerates, or no financial group at all.