



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

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Opinion

Title

DG MARKT - Impact Assessment on: Proposal for a Revision of the Financial Conglomerate Directive

(draft version of 22 April 2010)

(A) Context

The cross-sectoral nature of conglomerates – i.e. groups which combine licenses in various sub-sectors of the financial market such as insurance and banking – exposes them to group-specific risks (contagion, complexity, concentration and conflict of interest) which are not addressed by the sector-specific directives covering a group individual undertakings (the Capital Requirements Directive and the insurance directives). Accordingly, the Financial Conglomerates Directive (FICOD - Directive 2002/87/EC) provides for the supplementary supervision of those conglomerates with significant cross-sectoral activities.

Following a formal review process and drawing on the lessons emerging from the financial crisis, a series of Commission initiatives are addressing identified shortfalls in the workings of FICOD. The report under analysis refers to a proposal addressing a subset of such issues.

(B) Overall assessment

The report provides the necessary evidence base for action in this area but should be improved in various respects. It should provide clearer indications of the fundamental causes, size and relevance of the various problems identified and better illustrate how the scope and timing of the proposal under analysis relates to other related initiatives. Some of the options proposed should be better explained, notably the retention of the materiality threshold, the design of the proposed technical standards, and the analysis of their impacts. Finally, the readability of the report for the non-expert reader should be improved.

(C) Main recommendations for improvements

(1) Clarify the nature of the problems and their underlying drivers. The report should provide clearer indications of the fundamental causes, size and relevance of the various problems identified, clearly stating to what extent FICOD has achieved its

objectives. The report should include a table providing the main economic statistics on conglomerates, distinguishing among those that are supervised, waived or automatically exempted from supplementary supervision. It should also summarize the main features of FICOD – such as the possibility for national supervisors to waive supervision under certain conditions – and the way in which FICOD supervision is meant to (or fails to) supplement sectoral supervision – for instance with regard to the loss of sectoral supervisory tools that FICOD implementation may involve. The problems should be more clearly explained with the help of examples or hypothetical scenarios if this is necessary for reasons of confidentiality. Finally, the report should discuss more explicitly how the problems identified raise issues in terms of the level playing field, regulatory arbitrage and international competitiveness of the EU financial industry.

(2) Better place the initiative in the broader context. While the report already makes an effort to highlight complementarities with other Commission initiatives in this area, it should illustrate more precisely which initiative will target which issue and when. In this context, the urgency of the proposed measures should be better substantiated. For the benefit of the non-expert reader, the report should also explain more clearly why some of the problems affecting supplementary supervision can only be addressed when the ongoing reviews of sectoral directives has been finalised.

(3) Provide a clearer justification for some of the options. The report should discuss how technical standards would be developed by the Joint Committee of the future European Supervisory Authorities, explain how their impacts would be assessed and discuss whether such standards may raise subsidiarity issues. When proposing to increase the scope of waiving, the report should assess the risks of a negative impact on the level playing field and legal clarity. Finally, the report should also discuss more extensively the reasons why the materiality threshold for conglomerate identification is retained under all options despite the concerns expressed by the industry during the public consultation process.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The report largely respects the standards set out in the IA guidelines but its readability for the non-expert should be substantially enhanced. To this end, an effort should be made to further reduce the use of technical language, or to explain it more fully. A list of acronyms and a glossary should be added. An annex summarizing the results of the consultations (including the views of long term investors) should be added.

(E) IAB scrutiny process	
Reference number	2010/MARKT/02
External expertise used	No
Date of Board Meeting	19 May 2010