

EVALUATION ROADMAP				
TITLE OF THE EVALUATION/FC		Financial Conglomerates Directive 2002/87/EC (FICOD), amended by Directive 2011/89/EU (FICOD 1) and Directive 2013/36/EU (CRDIV)		
LEAD DG – RESPONSIBLE UNIT		FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL MARKETS UNION/D2	DATE OF THIS ROADMAP	01 / 2016
TYPE OF EVALUATION	Evaluation Ex-post Mixed	PLANNED START DATE	Q1/ 2016	
		PLANNED COMPLETION DATE	Q4 / 2016 / Q1/2017	
		PLANNING CALENDAR	http://ec.europa.eu/smart-regulation/evaluation/index_en.htm	
This indicative roadmap is provided for information purposes only and is subject to change.				

A. Purpose
(A.1) Purpose
<p>The purpose of this evaluation is to assess the performance of the financial conglomerates directive ("FICOD") in terms of effectiveness, efficiency, coherence, relevance and EU added value compared to its stated objectives. Where appropriate the evaluation will identify possible issues in the functioning of FICOD 1 and, depending on the conclusions, will help inform improvements and next steps in relation to FICOD 1. It may also form the basis of a future impact assessment should it be determined that FICOD should be reviewed.</p> <p>The output of this evaluation will be a Commission staff working document outlining the results of the evaluation in terms of the relevance, effectiveness, efficiency, coherence and EU added value of FICOD 1.</p>
(A.2) Justification
<p>The financial crisis revealed gaps in the powers given to the supervisors in respect of financial conglomerates which prompted the first revision of FICOD ("FICOD 1"). FICOD 1 was a "quick-fix" aimed at remedying specific crisis related problems but it also contained an obligation for the Commission to carry out a more profound review of FICOD 1, followed by a legislative proposal if necessary. Following this request the Commission delivered a report in December 2012 identifying a number of aspects of FICOD 1 requiring revision. A review was put on hold pending the negotiations and subsequent adoption of the sectorial legislation on which FICOD builds – namely banking and insurance. Because the sectorial legislation has been in force for a while, and it has been 3 years since the publication of the Commission report, now is appropriate to consider whether FICOD 1 is performing according to its objectives.</p> <p>Based on the above, the Commission took the decision in 2015 to conduct the FICOD 1 evaluation under the Regulatory Fitness and Performance Programme (REFIT) in order to assess whether the Directive is "fit for purpose."</p>

B. Content and subject of the evaluation
(B.1) Subject area
<p>FICOD was adopted in 2002 in response to the need to supervise, on a group-wide basis, financial groups/conglomerates providing services and products in different sectors of the financial markets, most importantly to bank-insurance groups (so-called "bancassurance groups").</p> <p>FICOD builds on sectorial legislation relating to banking and insurance and provides supervisors with tools to apply supplementary supervision for financial conglomerates, addressing any blind spots in the sectorial legislation and to avoid the circumvention of prudential requirements set-out in sectorial legislation.</p> <p>Some of these groups/conglomerates are among the biggest financial groups/conglomerates which are active in</p>

the financial markets and provide services on a global basis. If such groups/conglomerates, and in particular credit institutions, insurance undertakings and investment firms which are part of such a conglomerate, were to face financial difficulties, these could seriously destabilize the financial system and affect individual depositors, insurance policy holders and investors.

The evaluation concerns the rules set out in FICOD 1. FICOD 1 sets out rules concerning:

- identification of financial conglomerates – FICOD 1 sets out thresholds to identify groups which have significant activity in both the banking/investment and insurance sectors and should therefore be subject to the supplementary supervision prescribed under FICOD 1;
- capital adequacy – FICOD 1 requires a capital calculation at the level of the financial conglomerate;
- risk concentration and intragroup transactions – financial conglomerates must report on significant risk concentrations and intra-group transactions;
- internal control mechanisms and risk management processes – financial conglomerates are required to have adequate internal control and risk management processes;
- coordination between supervisors – FICOD 1 contains details on how supervisory authorities from different Member States and from both the banking/investment and insurance sectors should coordinate in the supervision of financial conglomerates, including details on how to designate a lead supervisor for the group

(B.2) Original objectives of the intervention

FICOD 1 provides supervisory tools in order to ensure better prudential supervision of these groups active in both the banking/investment and insurance sectors. This helps ensure that the risks specific to these groups are captured by supervisors, and also that there is no arbitrage of the sectorial rules. This in turn helps ensuring the financial soundness of these groups, and reduces the risk of financial difficulties destabilising the financial system. This contributes to the financial stability of the EU financial system.

(B.3) How the objectives were to be achieved

The objectives of FICOD were to be achieved through a number of measures to address specific risks posed by these groups. Those measures and risks are summarized below.

The risk of so-called “double gearing” (i.e., that one entity holds regulatory capital issued by another entity within the same group and the issuer is allowed to count the capital in its own balance sheet) is addressed through the capital adequacy rules which ensure that sufficient capital is held at the level of the group to cover risks emerging from both banking and insurance sectors.

FICOD 1 requires reporting on significant risk concentrations and intra-group transactions at the level of the financial conglomerate, which provides supervisors with an overview of the areas of significant risk build-up across the group which may not be captured on a purely sectorial basis.

FICOD 1 requires financial conglomerates to have adequate internal control mechanisms and risk management processes in place. These control mechanisms and processes will help manage contagion, where difficulties in one part of the group impact on another, as well as conflicts of interest, where a decision taken in the interest of one part of the group may not be beneficial for other parts of the group or for the conglomerate as a whole. These internal control and risk management processes ensure that management considers the impact of actions and decisions across the conglomerate.

FICOD 1 also provides for an increase in coordination among supervisors, both across borders and across sectors. This aims at tackling the risk of regulatory arbitrage and at increasing supervisors' understanding of the risks across sectors within the group. Without FICOD 1 sectorial supervisors (those supervising solely the banking/investment or insurance parts of a group) would be largely blind to the risks stemming from entities in the other sector. FICOD 1 aims at increasing supervisory cooperation in order to enable more effective and comprehensive supervision across mixed financial groups.

C. Scope of the evaluation/FC

(C.1) Topics covered

The evaluation will cover the original FICOD (Directive 2002/87/EU) and the first amending Directive (2011/89/EU). It will also consider the RTS produced under mandates in FICOD – the RTS on the uniform conditions of application of the calculation methods for determining the amount of capital required at the level of the financial conglomerate; and the RTS on risk concentration and intra-group transactions. The evaluation will cover the rules in force in the EU; it does not consider the application of rules in other jurisdictions.

(C.2) Issues to be examined
<p>The REFIT evaluation will contain an assessment of the relevance, effectiveness, efficiency, coherence and EU added value of FICOD 1.</p> <p>To this extent answering the following questions will be relevant:</p> <ul style="list-style-type: none"> • To what extent is FICOD 1 still relevant? • How well adapted is FICOD 1 to changes in the regulatory and market framework in the EU? • To what extent has FICOD 1 achieved its objectives? • What have been the qualitative and quantitative effects of the implementation of FICOD? • How affordable were the costs borne by different stakeholders, given the benefits they received? • To what extent is FICOD 1 coherent with other interventions? • To what extent is FICOD 1 coherent with international obligations? • What is the added value of FICOD 1 compared to what could be achieved by Member States at a national level? <p>In 2012 the Commission published a report which identified a number of deficiencies in FICOD 1. Any review of FICOD 1 was put on hold pending the conclusion of the sectorial legislation on which it builds – namely CRDIV/CRR and Solvency II. The development of CRD/CRR and Solvency II may have changed the relevance of FICOD 1.</p> <p>This REFIT evaluation should also consider whether the areas identified in the 2012 Report remain relevant for assessing whether FICOD 1 has fulfilled its objectives.</p> <p>The main areas to consider are:</p> <ul style="list-style-type: none"> • scope of the Directive; • application of the thresholds in identifying financial conglomerate; • use of the waivers under the Directive; • intra-group loss cover; • effectiveness of the rules on governance and transparency; • use of stress testing under the Directive; • sanctioning under the Directive; • cooperation between supervisors, including the ECB; • the interaction between Article 49 CRR and the calculation methods under FICOD.

D. Evidence base
(D.1) Evidence from monitoring
<p>Every year the ESAs publish a list of identified conglomerates, along with the competent authorities involved in the supervision of these groups. The list is agreed between the ESAs and the competent authorities. However, the list only contains the names of identified groups; it does not contain further data on the groups (for example balance sheet information).</p>
(D.2) Previous evaluations and other reports
<ul style="list-style-type: none"> • The Commission published a report on FICOD 1 in 2012, which was accompanied by a staff working document. This report and working document can be found here - http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52012DC0785; http://ec.europa.eu/finance/financial-conglomerates/docs/121220_staff-working-document-conglomerates_en.pdf • An impact assessment was undertaken for the first amendment of FICOD and can be found here - http://ec.europa.eu/finance/financial-conglomerates/docs/com-2010-433_summary_en.pdf; http://ec.europa.eu/finance/financial-conglomerates/docs/com-2010-433_impact_assessment_en.pdf <p>The 2012 Report will help indicate areas where FICOD 1 has been assessed as failing to meet its objectives.</p>

(D.3) Evidence from assessing the implementation and application of legislation (complaints, infringement procedures)
<p>The IA for the first amending Directive (FICOD 1) set out some main messages following analysis of the implementation of FICOD, particularly the need to:</p> <ul style="list-style-type: none"> • harmonize the definition of capital across the sectorial directives (CRDIV/CRR and S2); • make the FICOD identification criteria more risk-based; • address the interaction of the three directives to ensure a predictable level playing field and converged supervisory practices, particularly with regard to the inclusion and treatment of participations; • allow for a supervisory review process (i.e., Pillar 2), including assessment of internal group-wide risk strategies, model development, internal control and related policies at top level; and • clarify which accounting rules should be applied to capital aggregation methods. <p>These conclusions were drawn on the basis of a consultation among three key groups of stakeholders: Member States; supervisors; and industry.</p> <p>The transposition deadline for FICOD 1 was June/July 2013. Transposition has been completed in most Member States (when in 2013 or more recently?). The main issue in transposition has been linked to the rules on inclusion of asset managers in the thresholds for identifying a financial conglomerate.</p>
(D.4) Consultation
<p>The evaluation will require a public consultation. The public consultation will be undertaken at the beginning of the REFIT evaluation, on the basis of work undertaken previously to understand deficiencies in FICOD 1. The informal feedback received so far will help to formulate the information given in the public consultation and will aim to address the follow issues:</p> <ul style="list-style-type: none"> • What have been the qualitative and quantitative effects of the implementation of FICOD? • Are the deficiencies in FICOD 1 identified in the Commission's 2012 report still relevant? • Is FICOD 1 relevant for the current structures of mixed-financial activity groups in the EU market? • Has the changing regulatory framework (the development of CRR/CRDIV and Solvency II) affected the relevance of FICOD 1? <p>The stakeholders affected include:</p> <ul style="list-style-type: none"> • financial conglomerates as identified under the Directive; • other financial groups active in multiple sectors; • counterparties to financial conglomerates, be it other banks, financial institutions, as well as clients, be it retail or professional; • competent authorities supervising the conglomerates, including ECB in the SSM framework.
(D.5) Further evidence to be gathered
<p>In addition to the evidence gathered during the public consultation, we propose the following sources of information:</p> <ul style="list-style-type: none"> • a roundtable event with representatives from industry and the supervisory community; • bi-lateral follow-up with stakeholders based on responses to the public consultation.