

## Comments on Review of FCD

Name/ company: CEA

Please insert your comments and answers in the table below, and send it in word format to [fcdadvice@c-ebs.org](mailto:fcdadvice@c-ebs.org) and [secretariat@ceiops.eu](mailto:secretariat@ceiops.eu), indicating the reference "JCFC-09-10". In order to facilitate processing of your comments, we would appreciate if you could refer to the relevant section and/or paragraph in the Paper JCFC-09-10.

Reference	Comment and answers
<p>General comment on the <b>whole</b> Review of FCD</p>	<p><b>We welcome the opportunity to comment on the review of the Financial Conglomerates Directive (FCD). We agree with the Joint Committee on Financial Conglomerates (JCFC) that there are important technical issues that need to be resolved now and we are generally supportive of the solutions presented in the consultation paper.</b></p> <p><b>At the same time, we would stress that many of the issues in the consultation paper are also being revised at sectoral levels. For the insurance sector, Solvency II Level 2 implementing measures will address participations and intra-group transactions and risk concentration (see CEIOPS' Consultation Paper No.61 (CP 61)). It is very important that there is consistency between sectoral developments and the review of the FCD. In our view Solvency II offers a blueprint for financial services regulation. Any changes to the FCD now should not be inconsistent with Solvency II Framework Directive and Solvency II Level 2 implementing measures.</b></p> <p><b>We support having a full review of the FCD at a later stage and in our view this review should address any new sectoral developments and inconsistency between the FCD and sectoral directives, in particular Solvency II and its Level 2 implementing measures. However we are concerned about the different timelines for the technical review and full review of the FCD, and Solvency II and CRD. The interaction of implementing processes will be challenging for financial conglomerates and should not result in unstable financial conglomerate supervision (e.g. identification of financial conglomerates could differ from one year to another).</b></p> <p><b>We would also like to draw attention to the fact that Solvency II is a Lamfalussy style Directive</b></p>

Comments on Review of FCD	
Name/ company: CEA	
	<b>whereas the FCD and CRD are not. This might create problems in the future. For example Solvency II allows for optional Level 2 implementing measures with regard to intra-group transactions and risk concentrations.</b>
Chapter 2	Definitions of different types of holding companies and their impact on the application of sectoral group supervision
Q1 Do you agree with the above analysis?	We agree with the analysis that the issue should be addressed. On the other hand we are not aware of any empirical evidence that insurance groups try to structure themselves for regulatory arbitrage purposes.
Q2 Do you agree to the proposed recommendations? (Yes / No) If No, please elaborate on your alternative proposal	<p>Whilst we are supportive of addressing the problems mentioned in the consultation paper, we are concerned that the proposed solution may create additional issues. It might interfere with the sectoral definitions of FHC/IHC, especially in situations where the MFHC holds banking and insurance participation of an equal size. According to the definition of an IHC stated in Article 210 of the Solvency II directive, it is required that the holding of participations in insurance or reinsurance undertakings is the main business of the company. Therefore, a MFHC basically cannot qualify as a FHC/IHC if its sectoral participations are nearly balanced or not dominated by one sector. These companies might just qualify as a mixed-activity holding company which is not subject to a wide range of group supervisory tools.</p> <p>The JCFC proposal might also introduce a new layer of supervision in simple structures where group supervision has not been in place before (holding company with one subsidiary which is subject to sectoral solo supervision). Moreover, the proposal would - as admitted by the JCFC itself - lead to duplications and multiple supervisory procedures given the fact that one company is supervised as a MFHC and IHC/FHC at the same time. Realizing this we would advise the JCFC to avoid unnecessary duplications. We do recognise that the proposals of the JCFC with respect to holding companies will lead to some benefits for banking-led financial conglomerates and for insurance-led financial conglomerates with banking subgroups.</p>
Other comments on chapter 2	The proposed legislative change by the JCFC would imply changing also the Solvency II Directive (Article 210 (1) e) "insurance holding company" and f) "mixed-activity holding company").

Comments on Review of FCD	
Name/ company: CEA	
Chapter 3	The definition of "financial sector" and the application of the threshold conditions in Article 3 of the FCD
Part 1	Inclusion of entities for the purposes of identifying a financial conglomerate
Q3 Do you agree with the above analysis?	We agree that it would be helpful to have clarity on the inclusion of AMCs. Clearly there should be harmonisation between member states on this issue and therefore guidance or legislative revision is required. However, we would have welcomed in-depth analysis on the impact of including AMCs. Without this analysis it is difficult for us to give our views on this issue.
Q4 Do you agree to the proposed recommendations? (Yes / No) If No, please elaborate on your alternative proposal	<p>We do not oppose the option chosen by the JCFC (legislative change to include AMCs). However this legislative change should take into account of a situation where an AMC is managing assets on behalf of related credit or insurance institutions ("outsourced" capital management). Supervisory authorities should distinguish between proprietary asset management and third party asset management (we assume that such a split could be done easily). Related asset management companies whose only or main activities are proprietary asset management, and whose third party asset management is only accounting for a minor part of the overall assets under management, should be excluded for the purpose of identifying a financial conglomerate. The balance sheet items relating to the proprietary business conducted by those asset management companies should not be considered in the calculation of the thresholds according to Article 3 (2) and (3) FCD, i.e. it should be deducted from the balance sheet total before determining whether activities in different financial sectors are significant.</p> <p>We are therefore supportive of legislative guidance to ensure that AMCs are treated in a harmonised way by the supervisors as long the specific situation outlined above is excluded from the identification of a financial conglomerate. It has to be kept in mind that in identifying a financial conglomerate the FCD allows for combining banking and securities activities which is not possible for insurance. See also our comments to Part 3.</p>
Part 2	How to include AMCs in the identification process - Allocation of AMCs to a particular sector and criteria for using

Comments on Review of FCD	
Name/ company: CEA	
	income structure and off-balance sheet activities to determine the significance of the various financial sectors of a group
Q5 Do you agree with the above analysis?	We agree that there is ambiguity in the FCD on how to include AMCs in the identification process and measures need to be taken to ensure harmonisation. See also our comments to Part 1.
Q6 Do you agree to the proposed recommendations? (Yes / No) If No, please elaborate on your alternative proposal	See our comments to Part 1.
Q7 Could you suggest what issues the guidance should address and provide evidence to support your suggestion?	See our comments to Part 1.
Q8 Could you suggest what features could distinguish between an Asset Management Company (AMC) within a banking group and an AMC within an insurance	See our comments to Part 1. AMCs in insurance groups often manage the assets of the insurance groups themselves in the context of the insurance business model and therefore play a very different role to AMCs in banking groups.

Comments on Review of FCD	
Name/ company: CEA	
group?	
Part 3	Should quantitative standard thresholds determine whether supplementary supervision applies to a group?
Q9 Do you agree with the above analysis?	We agree with the JCFC that the thresholds should be made more risk-based and that the current thresholds are not necessarily fulfilling the objectives of the FCD.
Q10 Do you agree to the proposed recommendations? (Yes / No) If No, please elaborate on your alternative proposal	<p>We support a combination of options 2 and 3. This is a risk-based approach and also addresses our previous concern on the absolute threshold being too low. The absolute threshold is that the balance sheet total of the smaller financial sector exceeds €6bn. This should be increased as proposed in option 3. In our view €10bn would be an appropriate absolute threshold and would reflect the growth of the market and inflation since the FCD regime was put into place in 2002.</p> <p>In addition, we would refer to the comments we made on Part 1 on asset management companies which are managing assets of related credit or insurance institutions. Level 3 guidance should clarify that intra-group financial services, such as proprietary asset management, should not be taken into account in the calculation of the quantitative threshold of Article 3(3). We would also propose that a new waiver possibility is included in the FCD to address the issue of AMCs whose main business is proprietary asset management. A new sub-paragraph could be added to Article 3(3) as follows:</p> <p><b>“(c) the balance sheet total of the smallest financial sector is attributable primarily to the provision of intra-group financial services, such as proprietary asset management for related group companies.”</b></p>
Q11 Could you suggest what issues the guidance should address and provide evidence to support your suggestion?	
Other comments on chapter 3	

Comments on Review of FCD	
Name/ company: CEA	
Chapter 4	Implications of different treatments of participations for the identification and scope of supplementary supervision of financial conglomerates
Q12 Do you agree with the above analysis?	We agree that there are different interpretations of the terms “participations” and “durable link” and that this leads to the objectives of the FCD not being achieved.
Q13 Do you agree to the proposed recommendations? (Yes / No) If No, please elaborate on your alternative proposal	<p>We believe that IFRS definitions would be a good starting point for definitions. We note that CEIOPS’ view in Consultation Paper No. 60 (Assessment of Group Solvency) is not fully in line with IFRS concepts (e.g. significant and dominant influence). Alignment of the scope of the regulatory group with the accounting group definition is desirable.</p> <p>We agree that there is a need to address the problem of different interpretations and applications of “durable link” but we are not certain that Level 3 guidance will solve the problem. A legislative change removing the “durable link” criterion from the FCD may also offer a solution.</p> <p>We agree with the proposed recommendation for Part 2 aspect a) and b). Supervisors should be able to exclude a participation in the smaller sector from the identification exercise if it is the sole trigger for such identification and if it is adequately captured under sectoral supervision.</p> <p>We agree with the proposed recommendation for Part 2 aspect c).</p>
Q14 Could you suggest what issues the guidance should address and provide evidence to support your suggestion?	
Other comments on chapter 4	
Chapter 5	The treatment of “participations” in respect of risk concentrations (RC) and intra-group transactions (IGT) supervision and internal control mechanisms

Comments on Review of FCD	
Name/ company: CEA	
Q15 Do you agree with the above analysis?	We support the analysis of the JCFC. It is difficult for undertakings to comply with the RC and IGT requirements of the FCD when they do not control the participations. Please see our comments to Consultation Paper 61 (Intra-group transactions and risk concentration) for Solvency II Level 2 implementing measures.
Q16 Do you agree to the proposed recommendations? (Yes / No) If No, please elaborate on your alternative proposal.	We agree that Level 3 guidance is required. It is difficult for us to give any more specific views before we see the content of the Level 3 guidance.
Q17 Could you suggest what issues the Level 3 guidance should address and provide evidence to support your suggestion?	In our view it would be essential that the guidance covers two of the issues covered in the consultation paper (access to all relevant information, and how to treat participations which are unregulated entities). The guidance should explain to supervisors how to apply the IGT and RC provisions in the FCD when the undertaking does not control the participation or when the participations are unregulated. We would ask that the guidance would be consistent with Solvency II and any possible Solvency II Level 2 implementation measures.
Other comments on chapter 5	Please see our comments to Consultation Paper 61 (Intra-group transactions and risk concentration) for Solvency II Level 2 implementing measures.
Annex I definitions	Solvency II definitions are missing, e.g. -“parent undertaking” is defined in Article 13 (12) -“subsidiary” is defined in Article 13 (13).