

Comments on Review of FCD

Name/ company: Aviva

Please insert your comments and answers in the table below, and send it in word format to fcdadvice@c-eps.org and 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 whole Review of FCD</p>	<p>This consultation paper review highlights some important areas of uncertainty, inconsistency and anomaly in the current implementation of the Financial Conglomerates Directive (FCD). Aviva agrees that it is necessary to resolve these areas in the interests of ensuring a fair playing field and a consistent, proportionate and risk based approach to supervising conglomerates.</p> <p>As a general comment, Aviva agrees that is a number of areas the issues can be addressed relatively quickly and flexibly by issuing level 3 guidance to supplement the existing provisions of the FCD. However, as the paper recognises, given that this guidance would not be legally binding there is a risk that it will not force regulatory convergence in the same way as would legislative amendments to the FCD. Given that the rationale of having an additional prudential supervisory regime for conglomerates is that these can be among largest and most complex of financial groups, with risk concentrations which may not be adequately understood by sectoral supervision alone, it is very important to have a clear and consistently applied conglomerates regime. Aviva therefore strongly encourage CEIOPs to take an active stance in relation to developing this guidance and monitoring its use by supervisors.</p> <p>Aviva would also welcome more clarity on how it is proposed to supervise conglomerates in future under the proposals for the new European Supervisory Authority regime.</p>

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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?	Yes
Q2 Do you agree to the proposed recommendations? (Yes / No) If No, please elaborate on your alternative proposal	Yes, we support option 1 which allows a holding company to be classified as both a mixed financial holding company and an insurance holding company/financial holding company and thus enables supervisors to retain the same supervisory powers as were in place before the group was identified as a conglomerate. This avoids the truly anomalous risk of the supervisory structure of a group being weakened by its classification as a conglomerate. The nature of the legal change proposed in option 1 seems the lowest impact method of achieving this.
Other comments on chapter 2	
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?	Yes, Aviva agrees that there is an unacceptable lack of clarity as to how asset management companies should be treated under the FCD
Q4 Do you agree to the proposed recommendations?	Given the need to ensure a consistent approach across the EU, Aviva supports option 2, ie the amendment of the FCD to explicitly ensure the inclusion of AMCs for the purposes of applying the tests and thresholds used to identify conglomerates.

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(Yes / No) If No, please elaborate on your alternative proposal	Aviva agrees that a guidance based approach would not achieve the same level of legal certainty eg the guidance would be at risk of conflicting with national laws
Part 2	How to include AMCs in the identification process - Allocation of AMCs to a particular sector and criteria for using 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?	Yes
Q6 Do you agree to the proposed recommendations? (Yes / No) If No, please elaborate on your alternative proposal	<p>Broadly Aviva agrees with the recommended approach of using guidance, as opposed to formal amendment of the FCD, to clarify when AMCs should be allocated to the insurance or banking sectors of a group for identification purposes, and when it would be appropriate to use alternative parameters, including income structure and off balance sheet activities, to assess the size of group for the purpose of identifying a conglomerate.</p> <p>The caveat is that the guidance results in a more consistent and risk based approach in practice. If, after a period, there is evidence that some supervisors are choosing not to pay due regard to the guidance and cross country convergence of practice is not therefore being achieved, the option of legislating should be revisited.</p>
Q7 Could you suggest what issues the guidance should address and provide evidence to support	

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your suggestion?	
Q8 Could you suggest what features could distinguish between an Asset Management Company (AMC) within a banking group and an AMC within an insurance group?	
Part 3	Should quantitative standard thresholds determine whether supplementary supervision applies to a group?
Q9 Do you agree with the above analysis?	Yes
Q10 Do you agree to the proposed recommendations? (Yes / No) If No, please elaborate on your	Yes Aviva supports option 2, which creates the opportunity to waive very small financial conglomerates and proposes level 3 guidance on eligibility criteria for waivers. Aviva agrees that the proposed treatment of very small conglomerates is more risk based, and that the waiver guidance should promote more consistency in approach. This is, however, subject to the same general caveat as our response to Q6, ie if the guidance is not consistently

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alternative proposal	applied across member states, then the alternative legislative approach of option 3 should be considered.
Q11 Could you suggest what issues the guidance should address and provide evidence to support your suggestion?	
Other comments on chapter 3	
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?	Yes
Q13 Do you agree to the proposed recommendations? (Yes / No) If No, please elaborate on your alternative proposal	<p>Aviva supports the proposed options 1A (guidance on the 'durable link' criterion) and 1B (guidance on how to include participations in the calculation of the threshold tests for conglomerates).</p> <p>Aviva also agrees with the proposed legislative change to the FCD to allow scope for supervisors not to treat a group as a conglomerate where the group only has participations rather than subsidiaries in the smallest sector, provided this is supplemented by appropriate risk based guidance on the circumstances in which it might still be appropriate to regard the group as a conglomerate, eg the particular risk profile of the group</p>

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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
Q15 Do you agree with the above analysis?	Yes
Q16 Do you agree to the proposed recommendations? (Yes / No)	Yes, Aviva supports option 1 ie additional level 3 guidance on how participations should be treated for the purposes of assessing conglomerates' risk concentrations, intra-group transactions and supervision and internal control mechanisms.

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If No, please elaborate on your alternative proposal.

Q17 Could you suggest what issues the Level 3 guidance should address and provide evidence to support your suggestion?

Other comments on chapter 5

Guidance needs to effectively address the problem of getting information out of participations.