

**Comments Template on EBA, EIOPA and ESMA's Joint Consultation Paper on its proposed response to the European Commission Call for Advice on the Fundamental Review of the Financial Conglomerates Directive**

**Deadline:**  
**13.08.2012**  
**cob**

**Stakeholder:**

**MACIF (Mutuelle Assurance des Commerçants et Industriels de France et des cadres et salariés de l'industrie et du commerce)**

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The question numbers below correspond to Joint Consultation Paper JC CP 2012 01

**Please follow the instructions for filling in the template:**

- ⇒ Do not change the numbering in column "Question".
- ⇒ Please fill in your comment in the relevant row. If you have no comment on a question, keep the row empty.
- ⇒ There are in total 10 questions. Please restrict responses in the row "General comment" only to material which is not covered by these 10 questions.
  - If your comment refers to multiple questions, please insert your comment at the first relevant question and mention in your comment to which other questions this also applies.
  - If your comment refers to parts of a question, please indicate this in the comment itself.

**Please send the completed template to [joint-committee@eba.europa.eu](mailto:joint-committee@eba.europa.eu), [jointcommittee@eiopa.europa.eu](mailto:jointcommittee@eiopa.europa.eu), and [joint.committee@esma.europa.eu](mailto:joint.committee@esma.europa.eu), in MSWord Format, (our IT tool does not allow processing of other formats).**

CFA Questions	Comments
General Comments	<p>Created in 1960, MACIF (<i>Mutuelle Assurance des Commerçants et Industriels de France et des cadres et salariés de l'industrie et du commerce</i>) is an insurance mutual company which adheres to the principles of social economy.</p> <p>The Macif group is organised into four sectors: non life, savings and life insurance, health and provident and other businesses which comprise credit/banking, asset management and services.</p> <p>The Macif group's turnover amounts to 5.7 billion euros. It is the first insurer for families in France with 4.8 millions of insured people It</p>

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has subsidiaries and holds stakeholdings in Spain, Portugal, Greece, Belgium and Poland and it develops partnerships in Maghreb countries.

As of today, the Macif group does not fall into the scope of financial conglomerates. Nevertheless and due to its insurance and banking activities, Macif considers appropriate to be interested in issues relating to financial conglomerate. Therefore, Macif keeps a watch on regulatory developpements regarding financial conglomerates and wishes to convey its views on the proposed reform of EU legislation at this early stage of the process.

1.

**Q1. What should be the perimeter of supervision, when a financial conglomerate is supervised on a group wide basis?**

We believe that the current legislation applying to financial conglomerates together with the forthcoming Solvency II regime provide an adequate level of rules and make the establishment of a new perimeter of supervision unnecessary.

We only agree with Recommendation 1 provided that any enlargement of the perimeter of supervision can be applied within the scope of the existing legislation and the forthcoming Solvency II regime.

In France, IORPS are already included in sectoral legislation. At the EU level, discussions about the revision of the IORP Directive are still under way, notably to decide how IORPs should be supervised and how their solvency requirements should be brought in line with the new insurance solvency regime. We trust therefore that it would be more appropriate to wait until this revision process is completed to consider whether IORPs should deserve further specific treatment under the financial conglomerate supervisory regulation.

We agree with Recommendation 2. However mixed financial holding companies, when identified as responsible parent, should definitely not be required to perform duplicate tasks in order to comply with sectoral and financial conglomerate legislation, as it is costly and time consuming. Waivers should be established so that supervision duties are performed only once.

We agree that entities conducting solely industrial activities with no financial services activities should be excluded from financial supervision unless such non regulated entities significantly impact the overall group to which they belong and may have significant impact on financial market.

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We cannot support the proposal that supervisors should have the power to require the creation of an intermediate financial holding company for financial supervision purposes. It is a general principle of corporate law that undertakings should freely choose their group structuring.

We have no objection for Tool 2 which suggests that there should be a specific team or division being the reference for the supervisors, provided that such referee acts directly or indirectly under the control of the management board of the legal entity to which it belongs.

It should however be recognised that there might be cases where establishing one single "point of entry" at the top of the unregulated entities is not possible due to group structuring issues.

We can support Tool 3 relating to the designation of a specified regulated entity as point of entry. Our remarks about it are developed in our response to question 2 below.

2.

**Q2. Which legal entity in a conglomerate should be responsible and qualify for compliance with group wide requirements?**

The responsible parent entity in a financial conglomerate should be the head company if such company conducts a regulated activity. The reason is that the head company is in the right position to control or have a significant influence over the activities of its subsidiaries that belong to the financial conglomerate.

In case the head company does not carry out a regulated activity, we suggest that it should explicitly indicate which entity should be the responsible entity, subject to the supervisor's approval. It is likely however that such entity would have no or little control or influence over the activities of the other subsidiaries in the financial conglomerate. This situation could be remedied by concluding contractual agreements between the responsible entity and the entities on which no control can be exercised. Such agreements would specify that these entities commit to duly perform their duties towards the responsible entity so that the latter complies with groupwide requirements under supervision constraints.

Another option could be to include the head company carrying no regulated activity within the perimeter of supervision so that it would consequently become the responsible parent of the group. We believe that when these non regulated entities significantly impact the overall group to which they belong, they should be included in the scope of supervision provided that, as explained

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before, such inclusion does not challenge the legislation in force nor Solvency II provisions.  
In any case, waivers should be applied so that such ultimate parent is not required to duplicate tasks in order to comply with sectoral and conglomerate legislation.

In our view, the criteria set forth in Recommendation 4 are relevant only where the responsible parent entity is the head company for control issues.

We readily support the proposal that supervisors of a financial conglomerate should be part of a college composed of supervisors specialised in banking activities and supervisors specialised in insurance activities. This would ensure that the underlying sectors of the financial conglomerate are well understood. This is particularly important considering the differences in nature between insurance and banking businesses. While it is important that there is one lead supervisor who should be specialised with regard to the most important regulated activity carried out by the financial conglomerate, it should always be the case that solo insurance supervision is carried out by an insurance supervisor.

3.

**Q3. Which requirements should be imposed on this qualified parent entity in the context of group wide supervision?**

We agree with Recommendation 5.

The ultimate responsible entity should be responsible for compliance with group wide requirements and therefore establish a group's corporate governance framework which includes risk management rules, internal control system and an effective internal audit and compliance system to ensure that the group conducts its affairs properly.

As the ultimate responsibility remains with the management board of the top entity, minimum requirements should aim to ensure that such management board is composed of persons collectively competent with an individual integrity demonstrated in personal behaviour and in business conduct and a soundness of judgment.

The group-wide governance being applied in all the relevant entities, the responsible management board must make sure that even though local or sectoral governance requirements of certain entities may be below the group standards, the group governance standards are properly applied. The top entity should also set up an adequate corporate governance framework in line with the structure, the business and the risks of the financial conglomerate which ensures that the strategy is properly implemented in all the relevant entities and is reviewed on a regular basis to include material changes such as geographic expansion or restructuring.

With regard to insurance, we believe that sufficient provisions will be in place under current legislation and the forthcoming

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Solvency II regime.

As explained in our response to question 2, a responsible entity which is not the head company is likely to find it difficult to coordinate and instruct other entities in the conglomerate over which such responsible entity has no or little control or influence.

2011/89/EU Directive mentions that if sectoral legislation sufficiently covers supervision of intra-group transactions and risk concentrations for financial conglomerates purposes, then the supervisory requirements may be carried out only once. As mentioned before, we strongly support the use of waivers so that undertakings perform tasks only once.

4.

**Q4. Which incentives (special benefits or sanctions) would make the enforcement of the group wide requirements more credible?**

Recommendation 6 might represent an alternative to the options we described in our response to question 2 as far as cases where the responsible entity has no or little control over the relevant entities in the financial conglomerate are concerned. We trust that our proposals would achieve the same objectives in a way that is more flexible and adapted to the wide diversity of situations and financial conglomerate structures.

We cannot support the proposed preventive and corrective measures that are developed by the ESAs under paragraph 4.3.3.2 of the document. We consider them as too far-reaching and not reflecting the normal course of business and risk-taking of financial conglomerates nor the way these are supervised today. This includes the following measures: require more strict supervisory requirements (e.g. capital, liquidity), restrict the business conducted by the institution, withdraw all or part of the license etc.). Powers granted to supervisors for financial conglomerate purposes should not overlap with powers granted to supervisors under sectoral legislation.

Here again, we value the proposal that supervisors of a financial conglomerate be part of a college composed of specialised supervisors. Each supervisor should be granted with enforcement powers towards the entities falling within the scope of its supervision which are basically the same powers under sectoral legislation. The lead supervisor should be granted with a power of alert towards the supervisors of its college when risks of infringement under conglomerate legislation may be identified.

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5.	<p><b>Q5. When reflecting under this advice, would supervisors in Europe need other or additional empowerment in their jurisdictions?</b></p> <p>We assume that the objective of Recommendation 8 is to promote the establishment of sufficient and clear supervisory powers and authority to ensure that supervisors can conduct effective group-wide supervision of financial conglomerates. As mentioned above, we believe that the current legislation and 2011/89/EU Directive together with the forthcoming Solvency II regime provide sufficient rules and make the establishment of additional provisions unnecessary.</p> <p>Under the Solvency II framework, binding technical standards will be introduced on reporting of risk concentrations and intra-group transactions across the (re)insurance group. These standards are incredibly detailed and (re)insurers are already investing heavily in their implementation plans to support this. We believe this framework should be used as the basis for any further reporting regime.</p> <p>With regard to cooperation between supervisors, we would very much support the establishment of an equivalent legal framework between the EU and non EU countries in order to make sure, for instance, that certain supervisors are not legally impeded from sharing relevant information with other supervisors whereas the counterpart supervisor has no such legal restriction.</p>
<b>Annex H Questions</b>	
General Comments	
1.	
2.	
3.	
4.	<p><b>Q4. Please provide some information on the potential additional compliance costs were your group to be identified as a conglomerate under these proposals.</b></p> <p>Regulators and supervisors alike should acknowledge that any extension of the perimeter of supervision would lead to an increase of compliance and supervision costs and limit such extension to the strict minimum needed to ensure an appropriate supervision</p>

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of financial conglomerates.

Further careful consideration should consequently be given to the relevance of enlarging such perimeter to include all financial activities that may generate a relevant risk within a financial conglomerate (i.e. insurance ancillary services undertakings, SPV and SPE and non regulated entities etc.) and to grant supervisors with specific powers, e.g. to require the creation of intermediate financial holding to be the addressee for supervision or to impose any further specific governance compliance duties to financial conglomerates.

In addition we would like to underline that financial enterprises are subject to a multiplication of supervising and accounting regulations which increases significant compliance costs as well as interpretation issues (group definition, valuation issues) and significant reporting requirements.

For the insurance sector undertakings will have to observe EIOPA's common reporting templates under solvency II directives, FSB ("Financial Stability Board's templates") and ECB's templates.

Therefore we consider that the set of tools applicable to financial groups should be harmonized to the extent possible.

5.