Comments on Review of FCD	
Name / company:	**Gesamtverband der Deutschen Versicherungswirtschaft / German Insurance Association (GDV)** **ID: 6437280268-55**
Please insert your comments and answers in the table below, and send it in word format to fcdadvice@c-ebs.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**
General comment on the **whole** Review of FCD	The German Insurance Association (GDV) welcomes the opportunity to comment on the consultation paper of the Joint Committee on Financial Conglomerates (JCFC) "The review of the Financial Conglomerate Directive" (JCFC 09 10, 28 May 2009). Although we believe that the review of the Financial Conglomerate Directive (FCD) might somehow collide with the ongoing implementation process of Solvency II (Level I and II) and the next waves of CRD reviews, we basically agree with the issues identified by the JCFC that might be subject for improvement. These issues are considered as important enough to justify to go forward with the FCD review. We also appreciate the range of options presented by the JCFC which will contribute to better achieving the objectives of the FCD. However, from the view of the German insurance industry any envisaged legislative or guidance measure should be in strict accordance with Solvency II to the extent possible. The agreed Solvency II directive should be the guideline and the blueprint for the future of the supplementary supervision of Financial Conglomerates. Bearing this in mind, the review should – for instance - not rely only on the provisions of the IGD (Footnote 5 refers to the IGD "including Solvency II"). Given the fundamental changes in group supervision under Solvency II

	compared to the IGD the FCD should rather anticipate the Solvency II concepts and definitions in order to avoid contradictions and inefficiencies. 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 II implementing measures will address the definition and treatment of participations and intra-group transactions/risk concentrations (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. Any changes to the FCD now should not be inconsistent with Solvency II Framework Directive and Solvency II Level 2 implementing measures. We support having a full review of the FCD at a later stage starting with a more fundamental debate in 2010 and in our view this review should address any new sectoral developments and inconsistencies between the FCD and sectoral directives, in particular Solvency II and its Level II implementing measures. It is evident that group supervision and capital related issues will have to be addressed. 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). We would also like to draw attention to the fact that the Solvency II Directive is a Lamfalussy style directive whereas the FCD and CRD are not. This might create problems in the future. For example Solvency II allows for optional Level II implementing measures ("may") with regard to intra-group transactions and risk concentrations (Article 248 (4) and Article 249 (4)).
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	We agree with the conclusion that action is required to address this issue. On the other hand we are not aware of empirical evidence for groups that restructure themselves for supervisory arbitrage in this regard. Bearing this in

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analysis?	mind, any solution should be proportionate and not impose supervisory burdens not justified by the relevance of the problem.
Q2 Do you agree to the proposed recommendations? (Yes / No) If No, please elaborate on your alternative proposal	Basically, we do have a certain preference for a legislative solution as it is presented in option 1. However, this proposal might interfere with the sectoral definitions of Financial Holding Company (FHC)/ Insurance Holding Company IHC especially in constellations where the Mixed Financial Holding Company (MFHC) holds banking and insurance participation at an equal size. According to the definition of an IHC stated in Art. 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. 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). This would result in additional subgroup supervision and would create an obvious contradiction to the envisaged consolidated assessment of a group. Moreover, the proposal would - as admitted by the JCFC itself - lead to duplications and multiple supervisory procedures given the fact that one company as supervised as a MFHC and IHC/FHC at the same time. Realizing this we would advise the JCFC to avoid unnecessary duplications. Regarding the reporting requirements the MFHC should be required only to disclose facts which do not apply to IHC/FHC according to their sectoral rules. Therefore, it might be reasonable to impose special reporting requirements for MFHC in order to avoid ambiguities. We do recognise that the proposals of the JCFC with respect to holding companies will lead to some benefits for banking-led financial conglomerates (because of waivers in sectoral group supervision) and, hence, for insurance–

Comments on Review of FCD	
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	led financial conglomerates with banking subgroups (in which these waivers could be applied, as well).
Other comments on chapter 2	It is still questionable for us why a mixed financial holding company should be subject to sectoral group supervision if it is covering two sectors and hence be subject to financial conglomerate supervision in order to make certain supervisory tools available to financial conglomerates. It would be a more reasonable approach to align the FCD based on the role model provided by Solvency II in order to remove inconsistencies. Remaining potential arbitrage in the identification process of financial conglomerates should be addressed by flexibility based on proportionality, i. e. taking into account the nature, scale and complexity inherent in the business of the group. 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”).
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 Asset Management Companies (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 us our views on this issue.
Q4 Do you agree to the proposed recommendations? (Yes / No) If No, please elaborate on your	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 eas-

alternative proposal	ily). 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. 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.
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?	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	Though we generally challenge the inclusion AMCs at all extra guidance on the interpretation of the terms “income structure” and off-balance activities” is welcomed in order to ensure a uniform application. See also our comments to Part 1.

Comments on Review of FCD	
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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 group?	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.
Part 3	Should quantitative standard thresholds determine whether supplementary supervision applies to a group?
Q9 Do you agree with the above analysis?	We subscribe to the conclusion that the current interaction between relative and absolute thresholds may lead to the identification of financial conglomerates that obviously don't have a risk profile justifying a supplementary supervision.
Q10 Do you agree to the proposed recommendations? (Yes / No) If No, please elaborate on your alternative proposal	We repeatedly argued for the possibility to exclude small groups with a low risk profile. Given this objective we support Option 2 if it is combined with an increase of the relative threshold from 6 bln. up to 10 bln. EUR. This adjustment would appropriately reflect the growth of the financial markets and the inflation since enactment of the FCD in 2002. The fact that the current Financial Conglomerates do not show a clear cut as regards the thresholds underlines we need for flexibility in respect of an even higher threshold. 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 finan-

Comments on Review of FCD	
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	cial 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.
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?	We agree with the JCFC conclusion to that extent that the “durable-link” criterion is responsible for many irritations and inconsistencies in the identification and supervision of financial conglomerates. However, we don’t believe that these problems just arise from a heterogeneous interpretation which might be solved through additional guidance. Inclusion and supervision of participations less than 20% due to a durable link is not appropriate und does not reflect the objectives of the FCD.
Q13 Do you agree to the proposed recommendations? (Yes / No) If No, please elaborate on your alternative proposal	Therefore, we strongly plead for a legislative solution in the sense of option 2. This adjustment should both remove the “durable-link” criterion and introduce a definition of participations similar to Art. 13(16) of the Solvency II directive. Independent from the identification issue the practical experience particularly proved that the enforcement of the FCD requirements with regard to participations less than 20% is hardly possible due to company law restrictions. The 20%-threshold would provide a great deal of clarity and consistency with group supervision based on Solvency II requirements. We believe that IFRS definitions would be a good starting point for definitions. We note that CEIOPS’ view in

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	CP 60 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 highly desirable. Such an alignment with accounting is crucial to reflect the internal control and management of groups.
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?	We support the analysis of the JCFC. It is difficult for the industry to comply with the RC and IGT requirements of the FCD when an undertaking does not control the participation. Please see our comments to Consultation Paper 61 (Intra-group transactions and risk concentrations) 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.	Concerning supervisory reporting requirements on intra-group-transactions and risk concentrations consistency with Solvency II (Level II) should be ensured. Art. 248/9 of the Solvency II directive instructs the supervision of risk concentrations/intra-group transactions which could be accompanied by implementing measures ("The Commission may …").
Q17 Could you suggest what issues the Level 3 guidance should	In our view it would be essential that the guidance covers two of the issues covered in the consultation paper (access all relevant information, and how to treat participations which are unregulated entities). The guidance should

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address and provide evidence to support your suggestion?	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 concentrations) for Solvency II Level 2 implementing measures.
Annex I Definitions	Solvency II definitions are missing, e. g. – “parent undertaking” is defined in Art. 13 (12) – “subsidiary” is defined in Art. 13 (13)