

**Comments on Review of FCD**

**Name/ company: EBF**

Please insert your comments and answers in the table below, and send it in word format to [fcdadvice@c-eps.org](mailto:fcdadvice@c-eps.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>	<ol style="list-style-type: none"> <li data-bbox="427 850 1955 1034">1. The Consultation Paper which the Joint Committee on Financial Conglomerates (JCFC) has prepared is an outstanding document. The Committee has provided a thorough and in-depth analysis of the various difficult and complex issues which it had been invited to address and, moreover, has the merit of proposing appropriate solutions by adopting an approach which is both pragmatic and flexible. This is most helpful as flexibility is key to when it comes to fine-tuning the supervision of financial conglomerates in a risk-sensitive manner.</li> <li data-bbox="427 1070 1955 1214">2. Whilst we fully understand that the Consultation paper did not go beyond the scope of the European Commission's call for advice, we would like to nevertheless stress the need to address, within a reasonable time-frame, any cross-sectoral differences which create distortions of competition across sectors, or which render the underlying conceptual framework of the sectoral Directives incoherent.</li> </ol> <p data-bbox="483 1257 1955 1390">This is particularly essential as cross-sectoral differences may influence the way in which financial conglomerates opt to structure themselves. The current regulatory environment puts banks which are to acquire participations in insurance companies at a disadvantage compared to insurance companies investing in banks: this is due to the need for banks to deduct the full book value of these participations from their Own Funds unless art. 59 can be used.</p>

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	<p>This distortive effect contravenes the principle of organisational neutrality of regulation.</p> <p>Financial conglomerates are subject to supplementary supervision which provides supplementary safeguard as well as increased transparency. In these circumstances, it would be appropriate for the CRD to be amended so that Member States, in line with the present widespread but not uniform practice within the EU, would no longer be allowed to require from banks which are included in the supplementary supervision to deduct participations.</p>
Chapter 2	Definitions of different types of holding companies and their impact on the application of sectoral group supervision
<p>Q1 Do you agree with the above analysis?</p> <p>Q2 Do you agree to the proposed recommendations? (Yes / No)</p> <p>If No, please elaborate on your alternative proposal</p>	<p><b>EBF Answers to Q 1 &amp; 2:</b></p> <p><i>The EBF fully subscribes to the analysis made by the JFCF as well as to the solution which it proposes.</i></p>
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

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Part 1	Inclusion of entities for the purposes of identifying a financial conglomerate
<p>Q3 Do you agree with the above analysis?</p> <p>Q4 Do you agree to the proposed recommendations? (Yes / No)</p> <p>If No, please elaborate on your alternative proposal</p>	<p><b>EBF Answers to Q 3 &amp; 4:</b></p> <p><i>The EBF concurs with the view taken by the JCFC that the FCD would need to be changed so that they are included for the purpose of identification as a financial conglomerate. We may note though that at least most AMCs appear to be already captured due to their being included in the consolidation under the CRD.</i></p>
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
<p>Q5 Do you agree with the above analysis?</p> <p>Q6 Do you agree to the proposed recommendations? (Yes / No)</p>	<p><b>EBF Answers to Q 5 to 8:</b></p> <p><i>The EBF agrees with the analysis made as well as with the proposed solution consisting in providing extra guidance, <u>provided flexibility is not lost.</u></i></p>

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If No, please elaborate on your alternative proposal

Q7 Could you suggest what issues the guidance should address and provide evidence to support 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?  
Q10 Do you agree to the proposed

**EBF Answers to Q 9 to 11:**  
*The EBF fully agrees with the analysis made in the Consultation paper and supports the proposed solutions as these will provide for more flexibility. The proposal reflects EBF's earlier suggestions.*

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<p>recommendations? (Yes / No)</p> <p>If No, please elaborate on your alternative proposal</p> <p>Q11 Could you suggest what issues the guidance should address and provide evidence to support your suggestion?</p>	
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?	<p><b>EBF Answers to Q 12:</b></p> <p><i>The EBF agrees with the analysis of the issue that needs to be addressed.</i></p>
Q13 Do you agree to the proposed recommendations?	<p><b>EBF Answers to Q 13:</b></p> <ul style="list-style-type: none"> <li>- <i>The EBF agrees that implementing the proposals made in the Consultation Paper would be an improvement compared to the current situation.</i></li> </ul>

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(Yes / No) If No, please elaborate on your alternative proposal	<ul style="list-style-type: none"> <li>- <i>It is not convinced that those proposals would result in an optimal situation and, therefore, believes that it may instead be appropriate to take a fresh look at the issue. The definition of “participation” (Art 2 item 11) consists of two alternative elements: 20% ownership/voting rights and participation as defined in the 4<sup>th</sup> Company Law Directive as rights in capital which create a “durable link. We strongly believe that the latter element to due its reference to the notion of “durable link” has introduced substantial complexity without bringing much added value. Quite the opposite, we feel that the quantitative trigger (20%) is simple in application but yet sufficiently broad to achieve the Directive’s objectives.</i></li> <li>- <i>Therefore, we suggest support for initiatives to change the respective definition in the Directive, accordingly.</i></li> </ul>
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? Q16 Do you agree to	<p><b>EBF Answers to Q 15 to 17:</b> <i>We agree that a more transparent and risk-based approach should be promoted within this framework and would like to suggest addressing this by means of a legislative change which would amend the definition of the concept of “intra-group transactions” (i.e. “all <u>transactions</u> by which regulated entities within a financial conglomerate <u>rely</u> either</i></p>

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<p>the proposed recommendations? (Yes / No) 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?</p>	<p>directly or indirectly upon other undertakings within the same group or upon any natural or legal person linked to the undertakings within that group by “close links”, for the fulfillment of an obligation, whether or not contractual, and whether or not for payment”).</p> <p><i>The qualification made that the regulated entities within a financial conglomerate need to rely upon another person or undertaking for the fulfillment of an obligation” is too vague. Therefore, more guidance would need to be provided to clarify the concept.</i></p>
Other comments on chapter 5	