

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:

European Federation for Retirement Provision – EFRP, Koningstraat 97 Rue Royale bus/bte 21, B-1000 Brussels

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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, jointcommittee@eiopa.europa.eu, and joint.committee@esma.europa.eu, in MSWord Format, (our IT tool does not allow processing of other formats).

CFA Questions	Comments
General Comments	The European Federation for Retirement Provision (EFRP) welcomes the revision of the Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (FICOD). Yet, with reference to the Recommendation 1 (enlarge the perimeter of the supervision) and to the possible inclusion of Institutions for Occupational Retirement Provision (IORPs) as part of a financial conglomerate, the EFRP considers that this initiative is:

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1. **Untimely:** The IORP Directive, which defines the general framework for supervision of Institutions for Occupational Retirement Provision, is currently under revision. The process is currently in its technical phase, with EIOPA consulting stakeholders on the technical specifications of the Quantitative Impact Study. At this point in time, bringing the IORPs within the financial conglomerate would set a specific framework for some IORPs. This is particularly undesirable, at a moment when the general framework is being defined. Such a move would be not only undesirable, but even counter-logic. The EFRP would ask for a more logic sequence, where the general framework (IORP II Directive) is defined, before any specific discipline for IORPs is set.
2. **At risk of generating differentiation in treatment of IORPs across the European Union:** Being the general supervisory framework under revision, the definition of a special supervisory regime for IORPs which are included in a FICO may introduce an undue and undesirable differentiation between the supervisory criteria and practices applying to different IORPs across the European Union.
3. **Unable to attain the relevant subjects, despite positive intentions:** In some cases, IORPs may deserve being included under a special supervisory framework, particularly when they are part of a financial conglomerate as defined by the Joint Forum¹. Yet, financial conglomerates of this kind mainly provide workplace pensions in Member States where the pension vehicle is not defined as an IORP, according to national legislation. Therefore, in relevant cases, IORPs, which might be legitimately considered as part of a FICO, would not be included under the scope of the revised FICOD, because they wouldn't be defined as IORPs according to relevant national law.

1 A financial conglomerate is "any group of companies under common control or dominant influence, including any financial holding company, which conducts material financial activities in at least two of the regulated banking, securities or insurance sectors"

1.

- In some Member States (e.g. ES, FI, NL, UK) the financial conglomerate and the IORP are two separate entities: the financial conglomerate is not allowed to transfer assets from the IORP and vice versa (complete ring-fencing). The relation between the sponsor company and the IORP is already governed by the current rules of the IASB, in particular the rules of

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IASR 19 (International Accounting Standards Revised) which have recently been revised and will enter into force as of 1 January 2013. The rules of IASR 19 already prescribe which results and risks in relation to the IORP should be included in the balance sheet and profit and loss account of the sponsor/company. A revised FICO Directive which would, contrary to these facts, assume a group relation including inherent risks of double gearing and excessive leveraging (and, as a consequence, an obligation to consolidate the balance sheets of the sponsor/company and the IORP) would undermine these already existing accounting rules. This would in practice lead to a major confusion. Hence, there is no reason to include the IORP within the financial conglomerate and impose common capital requirements for supervisory purposes: in any case, the financial risk cannot be transferred between different entities;

- Furthermore, it can be noted that, even when IORPs would (contrary to the aforementioned arguments) be included as part of a financial conglomerate, this would probably turn out to be meaningless in practice, because the risks to be addressed by the FICO Directive (double gearing, excessive leveraging etcetera) can not take place in the case of IORPs. The reason for this is that these risks are already adequately covered by the existing IORP Directive (2003/41/EC) and its ongoing revision. Article 18 of the IORP Directive already regulates "intra-group transactions" between a company/sponsor and an IORP in an adequate manner. Adding FICO supervision would imply double (and perhaps contradictory) supervision
- In a situation of market distress, where the financial conglomerate or the IORP (or both) is facing a funding shortfall, defining common capital requirements for the financial conglomerate including, as such, the IORP, thus obliging one of the entities to fill the funding shortfall of the other, would extend the situation of economic distress from one entity to the other, thus broadening and deepening the systemic risk;
- Given the diversity of IORPs amongst Member States, it is difficult to analyze the risks that they may pose to the financial system and to the conglomerates in a harmonized way. Whilst IORPs have legal personality in some Member States, in other Members States they do not. Moreover, in many cases IORPs are not for profit organizations, established on the

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basis of a social agreement, and implying the direct participation of social partners (members of the Board); hence, the inclusion under the general definition of "financial sector" is not appropriate for IORPs;

- The ongoing revision of the IORP Directive aims to improve the security of occupational pensions and IORPs. A revision of the FICOD pursuing the same goal through a different legislative text would be overlapping and confusing. EIOPA is currently aiming to design, with the contribution of stakeholders and the broader public, who are going to provide their responses to the ongoing consultation, a revised IORP Directive which fits with the characteristics and diversity of IORPs in the European Union. Including IORPs under FICOD would regulate just a very limited part of the European IORPs, setting requirements which are only similar, not the same, to those applying to other IORPs active in the EU;
- Article 4 of the revised FICOD Directive (FICOD 1²) states that "Member States shall require that all persons who effectively run the insurance holding company or the mixed financial holding company are fit and proper to perform their duties". If this provision applied, *mutatis mutandis*, to IORPs, it might affect the participation of members, beneficiaries and social partners in the IORP governance structure. As recalled in the response by the EFRP to the second consultation carried out by EIOPA on the revision of the IORP Directive, the "fit and proper" requirements have to be linked to the nature and risk profile of an IORP. There may be some general principles of "fit and proper" requirements that are similar to insurance and reinsurance undertakings, but the content of the requirements need to be adapted to the specificities of the IORPs. It is important that the Board as a whole has an adequate level of expertise; it should not be required that each and every member of the Board of the IORP fulfils all "fit" professional expertise requirements. Once again, the proportionate definition of these requirements is currently undertaken by EIOPA and the European Commission and will hopefully make the object of a thorough Impact Assessment. Such process shall not be bypassed, only with reference to

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some IORPs, through the revision of the FICOD;

- An extension of the scope of FICOD to IORPs, as under Directive 2003/41/EC, would be very limited in terms of concrete achievements as well as in terms of harmonization of the EU legal framework for IORPs: some pension funds are outside the scope of the IORP Directive – this is particularly the case for pension funds set up by big insurance companies and banks operating cross-border. Yet, the pension funds in question are considered part of the social security system of the Member States where they are set and are outside the scope of the IORP Directive. Hence, an extension of the scope of FICOD to IORPs as under Directive 2003/41/EC would fall short of these entities, which might deserve being under the scope of supplementary supervision, as pursued through the FICOD revision.

As a consequence of all the above, the EFRP is in favour of Option 2: Maintain the status quo; such that IORPs would not be included within group wide supervision at cross-sectoral level.

² Directive 2011/89/EU of 16 November 2011

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**Annex H
Questions**

General
Comments

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