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Draft Regulatory Technical Standards

on risk concentration and intra-group transactions under Article 21a (1a) of Directive
2002/87/EC (Financial Conglomerates Directive).

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1. Executive Summary

1. In accordance with Article 21a (1a) of Directive 2002/87/EC (the ‘Financial Conglomerates Directive’, ‘FICOD’) and the procedure set out in Article 56 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010 (together the ‘European Supervisory Authority (ESA) Regulations’), the ESAs shall, through the Joint Committee, develop draft regulatory technical standards to establish a more precise formulation of the definitions set out in Article 2 and to coordinate the provisions adopted pursuant to Articles 7 and 8 and Annex II of the FICOD.
2. The draft Regulatory Technical Standards (RTS) aim to ensure a consistent application of Articles 2, 7 and 8 and Annex II of the FICOD. The draft RTS provide clarification about which risk concentration and intra-group transactions at the level of the financial conglomerate should be considered “significant”, given that Articles 7 (2) and 8 (2) of the Directive require that significant risk concentration and intra-group transactions be reported to the coordinators.
3. The draft RTS also provide for coordination of factors which coordinators and other relevant competent authorities should take into account when identifying types of significant risk concentration, defining appropriate thresholds for the reporting of risk concentration and intra-group transactions, when setting periods for reporting and overseeing significant risk concentration and intra-group transactions as part of the supplementary supervision on the basis of the FICOD.
4. In order to ensure a consistent application of the FICOD’s rules on risk concentration and intra-group transactions, the draft RTS provide that coordinators and the other relevant competent authorities should require regulated entities or mixed financial holding companies to report certain minimum information. The coordinator and the other relevant competent authorities should agree on the form and content of the significant intra-group transactions report, including language remittance dates and channels of communication.
5. Within the powers assigned by Union and national law, and without prejudice to other supervisory powers available, the draft RTS aim to provide a set of supervisory measures which should be taken into account by supervisors in their supplementary supervision according to the FICOD in order to foster a more harmonised approach with respect to supervisory measures.

2. Background and rationale

1. Financial conglomerates are subject to supplementary supervision in addition to that of sectoral supervision of the banking and insurance entities in the group. Supplementary supervision is designed to address two main concerns: (1) avoiding the double gearing or multiple use of capital, whilst ensuring it is appropriately allocated in the group according to sectoral rules; and (2) monitoring group risks, which are those risks arising from the group structure of a financial conglomerate, i.e. risks of contagion, structure complexity, risk of concentration, and conflicts of interest.
2. The FICOD was the first cross-sectoral legislative act in the field of prudential supervision. Cooperation between supervisors of different sectors was limited at that time and international cooperation in general was still in a developing stage. Since the enactment of the FICOD, cooperation in banking and insurance colleges has significantly intensified. Cross-sectoral college practices have evolved.
3. Different types of groups are captured under the scope of the FICOD regime. Conglomerate risks are therefore not the same for all groups.
4. Since the enactment of the FICOD, supplementary conglomerate supervision has evolved towards a more risk-based supervision, as evidenced by the changes implemented through Directive 2011/89/EU (hereinafter: “FICOD I”). The aim was to come to a better identification of groups that should be covered by the FICOD regime, also allowing for waivers with regard to both criteria.
5. Since the enactment of the FICOD, sectoral legislation both on the insurance and on the banking side has developed significantly, with a level of detail that is in sharp contrast to the provisions of the FICOD.
6. While Member States have implemented the FICOD and apply financial conglomerate supervision, the wide discretion given to Member States in the FICOD hampers supervisory consistency.
7. These RTS strive to enhance supervisory consistency with regard to risk concentration and intra-group transactions at the level of the financial conglomerate.

3. Draft Regulatory Technical Standards on risk concentration and intra-group transactions within financial conglomerates

1. These draft regulatory technical standards pursuant to Article 10 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010 (together the ‘European Supervisory Authority (ESA) Regulations’) set out the ESAs’ view of how to ensure consistent application of the Articles prescribed by Article 21a (1a) of Directive 2002/87/EC of the European Parliament and of the Council.
2. Pursuant to the procedure set out in Articles 10 through 14 of the ESA Regulations, the draft technical standards still need to be adopted by the European Commission by means of regulation or decision before they will be published in the Official Journal of the European Union and enter into force on the date stated therein (Article 10 (4) ESA Regulations).

COMMISSION DELEGATED REGULATION (EU) No .../..

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supplementing Directive 2002/87/EC of the European Parliament and of the Council with regard to regulatory technical standards to establish a more precise formulation of the definitions and to coordinate the provisions with respect to the supplementary supervision of risk concentration and intra-group transactions

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council¹, and in particular Article 21a (1a) thereof.

Whereas:

1. Coordinators are empowered to overview significant risk concentration and significant intra-group transactions and to identify the types of risks and transactions, which regulated entities in a financial conglomerate shall report. They are also empowered to define thresholds. In order to coordinate these provisions, this Regulation lays down a methodology to assist coordinators and other relevant competent authorities in their decision making.
2. Competent authorities are expected to take into account the particular situation of each specific financial conglomerate and the existing sector-specific requirements on risk concentration and intra-group transactions.
3. Regulated entities and mixed financial holding companies should report significant risk concentration and significant intra-group transactions in a coordinated manner. This will help coordinators and other relevant competent authorities to identify relevant issues and exchange information more efficiently. In order to achieve enhanced consistency in the reports on significant risk concentration and intra-group transactions, regulated entities and mixed financial holding companies should report at least certain standardised minimum information to the coordinators.

¹ OJ L 35, 11.2.2003, p.1

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4. Supervisory measures with respect to supplementary supervision of risk concentration and intra-group transactions vary across the EU. While acknowledging existing EU and national legal frameworks, in order to foster a level playing field and to facilitate coordinated supervisory practices across the EU, competent authorities should at least take into account certain supervisory measures with respect to the supplementary supervision of risk concentration and intra-group transactions.
 5. This Regulation is based on the draft regulatory technical standards submitted by the European Supervisory Authorities (European Banking Authority, European Insurance and Occupational Pensions Authority, European Securities and Markets Authority) to the Commission.
 6. The requirements of this Regulation build on the sectoral requirements on risk concentration and intra-group transactions, without prejudice to and without duplication of these requirements.
 7. The European Supervisory Authorities have conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the European Supervisory Authorities' respective Stakeholder Groups in accordance with Article 37 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010 respectively.

HAS ADOPTED THIS REGULATION:

Article 1- Subject matter

This Regulation lays down rules regarding:

1. a more precise formulation of the definitions of intra-group transactions and risk concentration as referred to in Article 2 (18) and (19) of Directive 2002/87/EC;
2. a coordination of the provisions adopted pursuant to Articles 7 and 8 and Annex II of Directive 2002/87/EC on:
 - (a) the information to be provided by regulated entities or mixed financial holding companies to the coordinator and other relevant competent authorities for the purpose of overseeing risk concentration and intra-group transaction;
 - (b) the methodology to be applied by these competent authorities to identify types of significant risk concentration and intra-group transactions;
 - (c) the supervisory measures to be applied by competent authorities as referred to in Articles 7 (3) and 8(3) of Directive 2002/87/EC.

Article 2 - Significant risk concentration

1. Significant risk concentration shall be deemed to arise from risk exposures towards counterparties which are not part of the financial conglomerate. They may arise from direct and indirect exposures, on-balance and off-balance sheet items, regulated and unregulated entities, the same or different financial sectors in a financial conglomerate, and from a combination or interaction of such exposures.

Counterparty risk or credit risk shall be deemed to include, in particular, risks related to interconnected counterparties in groups, which are not part of the financial conglomerate, including an accumulation of exposures towards those counterparties.

2. When identifying types of significant risk concentration, defining appropriate thresholds, periods for reporting and overviewing significant risk concentration, the coordinator and the other relevant competent authorities shall, in particular, take the following into account:

- (a) the solvency and liquidity position at the level of the financial conglomerate and of the individual entities within the financial conglomerate;
- (b) the size, complexity and specific structure of the financial conglomerate including the existence of special purpose vehicles, ancillary entities, third countries entities;
- (c) the specific risk management structure of the financial conglomerate and the features of the system of governance;
- (d) the diversification of the financial conglomerate's exposures and of its investment portfolio;
- (e) the diversification of the financial conglomerate's financial activities with respect to geographical areas and lines of business;
- (f) the relationship, correlation and interaction between risk factors across the entities in the financial conglomerate, i.e. inter-risk concentration;
- (g) the possibility of contagion effects within the financial conglomerate;
- (h) the possibility of a circumvention of sectoral rules;
- (i) the possibility of conflicts of interest;
- (j) the level or volume of risks;
- (k) a possible accumulation and interaction of exposures incurred by entities belonging to different financial sectors of the financial conglomerate, if not already reported at a sectoral level;

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- (l) exposures within a financial sector of the financial conglomerate, which are not reported under the provisions of the sectoral rules.
3. The coordinator and the other relevant competent authorities shall agree on the form and content of the significant risk concentration report, including language, remittance dates and channels of communication.
4. Within the powers assigned by Union and national law, the coordinator and the other relevant competent authorities shall, in particular, require regulated entities or mixed financial holding companies to report on the following information:
- (a) a description of the significant risk concentration according to the types of risks mentioned in paragraph 1;
 - (b) the break-down of the significant risk concentration by counterparties and groups of interconnected counterparties, geographical areas, economic sectors, currencies, identifying the names, company register numbers or other identification numbers of the relevant group companies of the financial conglomerate and their respective counterparties, including legal entity identifier (LEI), where applicable;
 - (c) the total amount of each significant risk concentration at the end of a specific reporting period valued according to the applicable sectoral rules;
 - (d) if applicable, the amount of significant risk concentration taking risk mitigation techniques and risk weighting factors into account;
 - (e) how conflicts of interests and risks of contagion at the level of the financial conglomerate regarding significant risk concentration are managed, taking into consideration the financial conglomerate's strategy to combine activities in the banking, insurance and investment services sectors, or a sectoral own risks self-assessment amended with consideration on the management of conflicts of interests and risks of contagion regarding significant risk concentration.

Article 3 – Significant intra-group transactions

1. Significant intra-group transactions may include the following transactions within a financial conglomerate:
- (a) investments and intercompany balances including real estate, bonds, equity, loans, hybrid and subordinated instruments, collateralised debt, arrangements to centralise the management of assets or cash or to share costs, pension arrangements, provision of management, back office or other services, dividends, interest payments and other receivables;
 - (b) guarantees, commitments, letters of credit and other off-balance sheet transactions;
 - (c) derivatives transactions;

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- (d) purchase, sale or lease of assets and liabilities;
 - (e) intra-group fees related to distribution contracts;
 - (f) transactions to shift risk exposures between entities within the financial conglomerate, including transactions with special purpose vehicles or ancillary entities;
 - (g) insurance, reinsurance and retrocession operations;
 - (h) transactions that consist of several connected transactions where assets or liabilities are transferred to entities outside of the financial conglomerate, but ultimately risk exposure is brought back within the financial conglomerate.

2. When identifying types of significant intra-group transactions, defining appropriate thresholds, periods for reporting and overviewing significant intra-group transactions, the coordinator and the other relevant competent authorities shall, in particular, take the following into account:

- (a) the specific structure of the financial conglomerate, the complexity of the intra-group transactions, the specific geographical location of the counterparty and whether or not the counterparty is a regulated entity;
- (b) the possibility of contagion effects within the financial conglomerate;
- (c) the possibility of a circumvention of sectoral rules;
- (d) the possibility of conflicts of interests;
- (e) the solvency and liquidity position of the counterparty;
- (f) transactions among entities belonging to different sectors of a financial conglomerate, if not already reported at sectoral level;
- (g) transactions within a financial sector, which are not already reported under the provisions of the sectoral rules.

3. The coordinator and the other relevant competent authorities shall agree on the form and content of the significant intra-group transactions report, including language, remittance dates and channels of communication.

4. Within the powers assigned by Union and national law, the coordinator and the other relevant competent authorities shall, in particular, require regulated entities or mixed financial holding companies to report on the following information:

- (a) dates and amounts of the significant transactions, names and company register numbers or other identification numbers of the relevant group entities and counterparties, including legal entity identifier (LEI), where applicable;

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- (b) a brief description of the significant intra-group transactions according to the types of transactions listed in paragraph 1;
 - (c) the total volume of all significant intra-group transactions of a specific financial conglomerate within a given reporting period;
 - (d) how conflicts of interests and risks of contagion at the level of the financial conglomerate regarding significant intra-group transactions are managed, taking into consideration the financial conglomerate's strategy to combine activities in the banking, insurance and investment services sectors, or a sectoral own risks self-assessment amended with consideration on the management of conflicts of interests and risks of contagion regarding significant intra-group transactions.

5. Transactions that are executed as part of a single economic operation, shall be summed up for the purpose of calculating the thresholds pursuant to Article 8 (2) of Directive 2002/87/EC.

Article 4 – Supervisory measures

Within the powers assigned by Union and national law, and without prejudice to other supervisory powers available, competent authorities shall, in particular, take into account the following supervisory measures:

- (a) to require that certain intra-group transactions of the financial conglomerate shall be performed at arm's length or that intra-group transactions, which are not performed at arm's length, shall be notified;
- (b) to require that certain intra-group transactions of the financial conglomerate shall be approved through specified internal procedures with the involvement of the management body² of the financial conglomerate;
- (c) to require regulated entities or mixed financial holding companies to report more frequently on significant risk concentration and significant intra-group transactions;
- (d) to define appropriate thresholds in order to identify and overview significant risk concentration and significant intra-group transactions;
- (e) to require additional reporting on significant risk concentration and significant intra-group transactions of the financial conglomerate;
- (f) to require a strengthening of the risk management processes and internal control mechanisms of the financial conglomerate;

² Including management body as referred to in Article 3 (1) of Directive 2013/36/EU and administrative, management or supervisory body as referred to in Article 40 of Directive 2009/138/EC.

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- (g) to require regulated entities or mixed financial holding companies to present or improve plans to restore compliance with supervisory requirements and to set a deadline for implementation thereof.

Article 5

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

4. Accompanying documents

4.1 Cost- Benefit Analysis / Impact Assessment

Introduction

According to article 10 of the ESAs Regulations the ESAs conduct an analysis of costs and benefits in the policy development process. The analysis of costs and benefits is undertaken according to an Impact Assessment methodology.

This section evaluates the impact of the draft regulatory technical standards developed by the Joint Committee of the ESAs in accordance with Article 21a (1a) FICOD, which aims to ensure consistent application of Articles 2, 7 and 8 and Annex II FICOD.

Problem definition

The Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC (hereinafter: “FICOD”) was published in the Official Journal of the European Union on 11 February 2003 and had to be implemented by 11 August 2004. The FICOD was the first cross-sectoral legislative act in the field of prudential supervision. It is a minimum harmonisation instrument. Cooperation between supervisors of different sectors was limited at that time and international cooperation in general was still in a developing stage. Since the enactment of FICOD, the banking and insurance college cooperation has intensified and cross-sectoral college practices have evolved.

After 10 years of experience with the supplementary supervision of financial conglomerates, different types of groups are covered under the FICOD regime due to the relatively broad numerical identification criteria that are used to define “financial conglomerate” (10% threshold and 6 billion euro threshold). The typical conglomerate risks are not for all of these groups relevant to the same extent. Supplementary conglomerate supervision has therefore evolved to a risk-based supervision, as evidenced by the changes implemented through Directive 2011/89/EU (hereinafter: “FICOD I”) to come to a better identification of the groups that should be covered by the FICOD regime, allowing for waivers with regard to both types of threshold.

Since the original FICOD, sectoral legislation both at the insurance side and the banking side has developed significantly, with a level of detail that is in sharp contrast to the provisions of the FICOD.

These are the main reasons why the FICOD has been a rather succinct instrument, with different broadly formulated provisions. In the FICOD, the risk-based paradigm is mainly expressed through the broad flexibility, which is given to coordinators and relevant competent

authorities. While all Member States have implemented FICOD and apply financial conglomerate supervision, the supervisory means through which this been done differ substantially. Different type of regimes exist throughout Member States ranging from an independent conglomerate regime to a regime based on the sectoral rules for the most important sector in the conglomerate (bank-led vs. insurance-led financial conglomerates).

While there were and still are good reasons for open, flexible provisions, this brings along the problem of divergent implementation and application of the provisions. An insufficient or uneven coverage of typical conglomerate risks may be the consequence. This gave rise to the mandate for this RTS.

Baseline

For the analysis of the potential related costs and benefits of the proposed Regulatory Technical Standards to ensure consistent application of Articles 2, 7, 8 and Annex II of Directive 2002/87/EC on the supplementary supervision of risk concentration and intra-group transactions, the ESAs have applied a baseline scenario defined as the prudential regulatory and supervisory situation for financial conglomerates and their supervisors and other involved stakeholders assuming that Articles 2, 7, 8, and Annex II of Directive 2002/87/EC and their implementing national legislation would exist without any further coordination through the draft RTS.

Objective pursued

The mandate to develop draft regulatory technical standards to ensure consistent application of Articles 2, 7, 8 and Annex II of FICOD on the supplementary supervision of risk concentration and intra-group transactions was introduced in the FICOD through Article 2, under point (20) (b) of FICOD I, which amended the FICOD mainly to introduce the so-called “top level supervision” for financial conglomerates. The mandate did not appear in the original proposal by the European Commission for the FICOD I and consequently was not mentioned in the impact assessment that accompanied the original proposal. It was only introduced at a late stage of the co-decision procedure by way of amendment no. 58 of the European Parliament (see Report on the proposal for a directive of the European Parliament and of the Council amending Directives 98/78/EC, 2002/87/EC and 2006/48/EC as regards the supplementary supervision of financial entities in a financial conglomerate. No specific justification appears in the report for this amendment.

As a consequence, besides the wording of Article 21a (1a) FICOD, there are no indications on the objectives pursued with the regulatory technical standards.

The text of Article 21a (1a) FICOD indicates that the objective of this RTS is twofold:

- a more precise formulation of the definitions set out in Article 2, and
- a coordination of the provisions adopted pursuant to Articles 7 and 8 and Annex II.

The overarching objective is to ensure consistent application of articles 2, 7, 8 and Annex II of FICOD.

4.1.1. Policy Options

Policy issue 1 - Establish more precise formulation of the definitions set out in Article 2 FICOD:

The mandate prescribes as part of ensuring a consistent application of Articles 2, 7 and 8 and Annex II of FICOD, that the RTS shall establish a more precise formulation of the definitions set out in Article 2.

The wording in Article 21a (1a) FICOD does not clearly set out whether all 19 definitions of Article 2 FICOD should be encompassed and formulated more precisely or whether only the definitions in Article 2 (18) and (19) which relate to the supplementary supervision of risk concentration and intra-group transactions, should be covered.

The ESAs concluded that Article 21a (1a) FICOD does not intend to mandate the ESAs with the establishment of a more precise formulation of all 19 definitions contained in Article 2 FICOD but only covers the definitions of intra-group transactions (Article 2 (18)) and risk concentration (Article 2 (19)) for the following reasons:

Only the definitions of risk concentration and intra-group transactions in Articles 2 (18) and (19) have a specific connection to Articles 7, 8 and Annex II FICOD, as Articles 7, 8 and Annex II deal with risk concentration and intra-group transactions specifically. In addition, Article 21a (1a) FICOD speaks of “consistent application” of Articles 2, 7, 8 and Annex II, which implies a linkage between these Articles. Other definitions in Article 2, e.g. the definition of “regulated entity”, “financial sector”, “participation”, are neither mentioned in Articles 7, 8 nor in Annex II of FICOD. These other definitions in some instances also have broad impacts on other areas beyond the supplementary supervision of risk concentration and intra-group transactions, which are neither referenced to in Article 21a (1a) FICOD nor in Articles 7, 8 and Annex II of FICOD.

Articles 7 (2) and 8 (2) FICOD provide that Member States shall require regulated entities or mixed financial holding companies to report on a regular basis to the coordinator any “significant” risk concentration and all “significant” intra-group transactions in accordance with Articles 7, 8 and Annex II FICOD. It is therefore of particular importance whether risk concentration or intra-group transactions are considered “significant”, because only these significant risks and transactions are subject to supplementary supervision. Specific definitions of “significant” risk concentration and “significant” intra-group transactions are not contained in FICOD.

The ESAs have considered whether a further clarification of the meaning of “significant” risk concentration and “significant” intra-group transactions would be of value to ensure a consistent application of Articles 2, 7, 8 and Annex II FICOD. They concluded that it would

be important to further elaborate on the meaning of “significant” risk concentration and intra-group transactions. In this context, two policy options emerged: (1) to establish a binding definition of “significant” risk and “significant” transactions, which would need to be reported under Article 7 (2) and 8 (2) FICOD (policy option 1) or (2), to describe risks and transactions, which would typically be understood to represent “significant” risk concentration and intra-group transactions through non-binding and non-exhaustive list of examples (policy option 2).

a. Policy option 1:

To establish a binding definition of “significant” risk concentration and “significant” intra-group transactions, which would need to be reported under Article 7 (2) and 8 (2) FICOD.

This policy option would entail a binding description of “significant” risk concentration and “significant” intra-group transactions, which would also prescribe which risks and transactions would need to be reported to coordinators pursuant to Articles 7 (2) and 8 (2) FICOD.

b. Policy option 2:

To describe the meaning of significant risk concentration and intra-group transactions to be reported to coordinators pursuant to Articles 7 (2) and 8 (2) FICOD in a non-binding and non-exhaustive manner.

This policy option would for example entail a list of risks and transactions, which typically constitute “significant” risk concentration and “significant” intra-group transactions to give steering to coordinators and other relevant competent authorities.

Policy issue 2 - Coordinate provisions adopted pursuant to Articles 7 and 8 and Annex 2 FICOD – methodology to identify types of significant risk concentration and intra-group transactions, define appropriate thresholds and set periods for reporting:

The mandate prescribes that as part of ensuring a consistent application of Articles 2, 7 and 8 and Annex II FICOD, the RTS shall “coordinate the provisions adopted pursuant to Articles 7 and 8 and Annex II”.

The starting point for this policy issue is that reference is made to the whole Articles 7 and 8 FICOD, and that these Articles contain further references. Consequently, the mandate for this policy issue is potentially very broad. The mandate could refer to the reporting of significant risk concentration or intra-group transactions (including for intra-group transactions a fall back significance threshold of 5 % of the total amount of capital adequacy requirements at the level of a financial conglomerate). It could also refer to the supervisory overview by the coordinator of these (significant) risk concentration or intra-group transactions and to the possibility, pending further coordination of Union legislation, either for the Member States, or for the competent authorities to set quantitative limits for risk concentration, and quantitative limits or qualitative requirements for intra-group transactions. It could also refer to the

application of the sectoral rules regarding risk concentration or intra-group transactions of the most important financial sector in the financial conglomerate, if any, to that sector as a whole in case the financial conglomerate is headed by a mixed financial holding company. Through paragraph 1 of Articles 7 and 8 FICOD, the mandate could indirectly also refer to the internal control and risk management procedures for, as well as to the measures to facilitate supplementary supervision of risk concentration and intra-group transactions. Internal control mechanisms and risk management processes are, however, addressed in Article 9 FICOD, including a separate mandate for the ESAs to develop common guidelines, Article 9 (6) FICOD.

Moreover, the mandate refers to Annex II FICOD, which is titled “Technical application of the provisions on intra-group transactions and risk concentration”. Here again, the different topics included in this annex lead to a broad range of possibilities to develop the RTS. Annex II outlines how the coordinator shall identify the type of transactions and risks regulated entities in a particular financial conglomerate shall report in accordance with the provisions of Article 7(2) and Article 8(2) FICOD on the reporting of intra-group transactions and risk concentration and how the coordinator shall define appropriate thresholds for this reporting based on regulatory own funds and technical provisions. Annex II also deals with the actual supervisory overview of intra-group transactions and risk concentration, and what kind of risks should be taken into account for this overview. Annex II repeats the option to apply at the level of the financial conglomerate the provisions of the sectoral rules on intra-group transactions and risk concentration, in particular to avoid circumvention of the sectoral rules.

FICOD also contains mandates for developing guidelines and technical standards in the field of risk concentration and intra-group transactions, namely Article 7 (5) and Article 8 (5), Article 21a (2) (b) and (c) FICOD. These other mandates have also been considered to further define and delimit the scope of the mandate in Article 21a (1a) FICOD. The ESAs understand that Article 21a (2) (b) and (c) FICOD refer to the format of the information to be provided. Thus, the RTS will not set up any criteria on the format of reporting requirements.

Based on this spectrum of possibilities, three policy options have been considered.

a. Policy option 1:

To provide technical standards addressed at financial conglomerates specifying thresholds, following which financial conglomerates need to report risk concentration to relevant competent authorities as a minimum standard.

Article 8 (2) FICOD, last sentence, determines that in so far as no threshold has been defined by the coordinator, an intra-group transaction shall be presumed to be significant if its amount exceeds at least 5 % of the total amount of capital adequacy requirements at the level of a financial conglomerate. Such a fall back threshold is not included in FICOD for risk concentration. Yet, some member states have implemented a threshold also for risk concentration in their national legislation, in some cases at 10% of the total amount of own

funds / capital adequacy requirements at the level of a financial conglomerate, sometimes at lower percentages or with a different basis (e.g. banking regulatory capital for banking led conglomerates).

b. Policy option 2:

To provide technical standards addressed at financial conglomerates, specifying types of risk concentration and intra-group transactions, which financial conglomerates need to report to relevant competent authorities as a minimum standard.

c. Policy option 3:

To provide technical standards addressed at competent authorities, specifying aspects to consider when identifying types of risk concentration and intra-group transactions vis-à-vis financial conglomerates for reporting, setting thresholds and defining periods for reporting.

Policy issue 3 – Coordinate provisions adopted pursuant to Articles 7 and 8 and Annex 2 FICOD – Content of the report on significant risk concentration and intra-group transactions:

According to Articles 7 (2) and 8 (2) FICOD, Member States shall require regulated entities or mixed financial holding companies to report significant risk concentration and intra-group transactions on a regular basis and at least annually to the coordinator. The exact content of such report is not defined in FICOD. In order to coordinate provisions adopted with respect to such reporting of risk concentration and intra-group transactions and in order to achieve the delivery of appropriate types of data for different conglomerates throughout Member States, the ESAs have considered the following policy options:

a. Policy option 1:

To leave the content of the reporting to the discretion of the coordinator and other relevant competent authorities to allow for tailored requirements.

b. Policy option 2:

To list a set of items that the coordinator and the other relevant competent authorities shall – within the powers assigned to them by European and national law – in particular request from regulated entities or mixed financial holding companies to harmonise requirements.

Policy issue 4 - Coordinate provisions adopted pursuant to Articles 7 and 8 and Annex 2 FICOD – Supervisory measures:

As part of the mandate to coordinate provisions adopted pursuant to Articles 7 and 8 and Annex 2 FICOD, the ESAs understand that the technical standards shall address not only the reporting of significant risk concentration and intra-group transactions but also the supervisory overview of significant risk concentration or intra-group transactions by the coordinator and/or the possibility, pending further coordination of Union legislation, for either

the member states or the competent authorities to set quantitative limits for risk concentration and quantitative limits or qualitative requirements for intra-group transactions, as foreseen in paragraph 3 of Article 7 and in paragraph 3 of Article 8 FICOD.

Based on that, a fourth and final set of policy choices was identified, for which two policy options were considered.

a. Policy option 1:

To establish a list of supervisory measures that competent authorities, within the powers assigned to them and without prejudice to other supervisory power available to them under European and national law, shall take into account when overviewing financial conglomerates including in particular measures which are available to authorities of both, the banking and the insurance sectors.

b. Policy option 2:

To establish a more exhaustive list of supervisory measures that competent authorities shall take into account when overviewing risk concentration and intra-group transactions, including not only the measures mentioned in option 1 but also measures that are available to one or the other sectoral competent authority under its sectoral regulatory framework.

4.1.2. Analysis of impacts

Policy issue 1 - Establish more precise formulation of the definitions set out in Article 2 FICOD

a. Policy option 1:

Positive impacts of option 1

A binding definition or list of “significant” risk concentration and “significant” intra-group transactions might have as a benefit that identical information would be reported to coordinators and other relevant competent authorities.

Negative impacts of option 1

This policy option would require financial conglomerates to adapt their internal reporting procedures with the respective resources, training, staff, etc. It would require supervisors to adapt their supervisory processes and internal guidelines.

In addition, certain risks concentration and intra-group transactions might already have been reported at sectoral level. They might not contribute to the supervision of significant risk concentration or intra-group transactions for an individual financial conglomerate because the financial conglomerate might have a specific corporate set-up, specific business activities, or specific inter-connectedness with other entities, which would not be mirrored by the pre-

defined information, but would require that different risks and transactions would be reported. Also, adding further factors to the list in the future would be difficult.

A binding definition or list of “significant” risk concentration and “significant” intra-group transactions as a minimum standard would leave coordinators the possibility to require additional information and capture all necessary data for a specific financial conglomerate. However, the information requests would not be tailored to the individual financial conglomerate and would contain information, which might not be relevant or redundant. This would entail an inefficient use of resources for the industry and for supervisors.

b. Policy option 2:

Positive impacts of option 2

A non-binding list of risk concentration and transactions, that generally constitute significant risk concentration and significant intra-group transactions, would foster harmonisation, since it will provide supervisors with a toolbox, which they can use to identify significant risks and intra-group transactions for a specific financial conglomerate.

It will, give coordinators the possibility to adjust reporting requirements and focus their supplementary supervision on significant risk concentration and intra-group transactions, which are relevant for a specific financial conglomerate. This should reduce administrative burden and allow coordinators and relevant competent authorities to focus their supplementary supervision over financial conglomerates since only relevant risks and transactions for a specific conglomerate will be considered.

Negative impacts of option 2

A negative aspect as compared to policy option 1 could be the non-binding character of the list, which might not generate the same degree of acceptance and enforceability. Option 2 would entail certain costs for supervisors, since they will need to check the completeness of their internal processes and that all relevant risks and transactions are being considered. However, these costs are relatively low, as coordinators and relevant competent authorities are expected to re-consider relevant types of significant risks and transactions on an ongoing-basis for a specific financial conglomerate in any case.

For conglomerates, no additional costs are to be expected since only significant risks and transactions for a specific conglomerate need to be reported.

Policy issue 2 - Coordinate provisions adopted pursuant to Articles 7 and 8 and Annex 2 FICOD - Methodology to identify types of significant risk concentration and intra-group transactions, define appropriate thresholds and set periods for reporting

a. Policy option 1:

Positive impacts of option 1

Policy option 1 achieves harmonisation to a greater extent compared to other options. It is a clear rule directly applicable to financial conglomerates, thus minimising the risks of diverging implementation and market distortion. In principle, costs and administrative burdens are expected to be evenly distributed both for financial conglomerates and authorities.

The Review Report of the European Commission³ also included this option as a preferred way to develop further the conglomerate framework.

Negative impacts of option 1

This option may create disproportionate burdens and might not achieve effective harmonisation, due to the following reasons:

First, the FICOD does not envisage a single threshold for the reporting of risk concentration across all financial conglomerates but instead leaves discretion to the coordinator in consultation with the other relevant competent authorities to set thresholds for the reporting of “significant” risk concentration on a conglomerate level. In doing so, the authorities are required to take the specific group and risk management structure of the financial conglomerate into account (Article 7(2) and Annex 2 of FICOD).

Moreover, the FICOD allows Member States to apply the sectoral rules on risk concentration at the level of the financial conglomerates, in particular to avoid circumvention of the sectoral rules. The framework of supplementary supervision adopted by the European legislator was clearly in favour of a tailored and flexible approach rather than the “one size fits all” approach. In this regard, it is worth remembering that a complete harmonisation of thresholds for the reporting of risk concentration was not proposed in the 2012 Commission Report for the review of the directive, where a milder approach based on ESAs’ guidelines fostering convergence was suggested.

The approach of the current EU legislation is largely justified by the following circumstances:

- a. financial conglomerates are very different in size, complexity of businesses, level of integration across the EU financial market and even within Member States’ markets;
- b. sectoral legislations on risk concentration both from the banking and insurance sides are still divergent due to the different nature of the underlying businesses and different methodological approaches to regulation and supervision.

Considering the above, setting a single threshold for the reporting of risk concentration applicable to each and every financial conglomerate appears to be a policy choice not in line with the legal text of the directive. Based on the legal text of FICOD and the EU Regulations setting up the ESAs, European authorities are not entitled to make such a policy choice, nor

³ Report from the Commission to the European Parliament and the Council of 20 December 2012, COM (2012) 785 final

can they overcome level 1 text by means of RTS, the scope and subject of which should be limited within the technical remit in any case.

From a cost-benefit analysis point of view this option would result in a rather inflexible approach and ineffective outcome. In particular:

- a. a unique threshold would impact the different financial conglomerates with a different magnitude, considering that conglomerate-specific characteristics such as size, combination of businesses, group structures may result in different significance of the phenomenon of risk concentration. A threshold based on the characteristics of a certain exemplary conglomerate (e.g. 10% of own funds/technical provisions) may prove too high for certain groups and too low for others;
- b. the single threshold, given the different nature of risks in the banking and insurance sectors and therefore different methodologies for measuring them in sectoral regulations, raises an issue of aggregating risks from different sectors in a financial conglomerate according to a single metric. However, a common cross-sectoral approach to measuring and aggregating risks has not been agreed at the international level so far and is clearly out of the mandate of the RTS;
- c. a single threshold set directly in a binding rule would leave no possibility for competent authorities, particularly within colleges, to adapt supervision to the characteristics of each financial conglomerate, thus undermining the principles of risk-based supervision and proportionality that are essential to supervision at the sectoral and supplementary level.

Lastly, to find sufficient common ground for inserting a numerical threshold in the RTS, the threshold would need to be set at a quite high percentage. Member States that wish to retain stricter thresholds would be able to do so. Consequently, the level of harmonisation obtained may be less meaningful than expected.

Another negative impact is that this option is limited to reporting; it is not concerned with the actual assessment of the risk concentration by the involved competent authorities and with the potential limits that apply on risk concentration.

b. Policy option 2:

Positive impacts of option 2

The main merit of this option is that it would be directly applicable to financial conglomerates whilst at the same time avoiding the rigidity of setting a fixed threshold. It may also imply limited burdens for supervisors, for the identification of what is a “significant” risk concentration and intra-group transactions would be ultimately left to the supervised groups/entities. This option would result in a “principle based” regulation whose concrete implementation is left to the discretion of the supervised entities/groups.

Some European and international policy documents around financial conglomerate supervision contain examples of the types of risk concentration and intra-group transaction that could be a potential threat to the regulated entities within the conglomerate or to the conglomerate as a whole (e.g. the Joint Forum risk concentration principles and intra-group transaction principles). This option would mean an “upgrade” of such soft law to directly applicable rules.

Negative impacts of option 2

This option might not effectively solve the problem and may pose some of the shortcomings highlighted with regard to option 1, due to the following:

Leaving to financial conglomerates the ability to decide what is a “significant” risk concentration and “significant” intra-group transaction according to types of risks/transactions set in general terms by the RTS may create uncertainties on what is expected by the supervisors, as well as allow arbitrage and lax implementation from some supervised groups/entities. As a result, financial conglomerates would be exposed to a high risk that they will not comply with supervisors’ expectations. This might require additional efforts for ex-post verifications and clarifications. It might also require enforcement procedures to verify an appropriate application of the standards.

Moreover, even with that principle-based approach, it still seems likely that types of risks and transactions identified in the technical standards might not be relevant for a particular financial conglomerate. This would result in supervision that is ineffective (i.e. not covering relevant risks) and overburdening (i.e. requiring reporting which is not or only marginally useful to assess the risk situation of a group).

Another negative impact is that this option is limited to reporting; it is not concerned with the actual assessment of risk concentration by competent authorities and the setting of limits that apply on risk concentration.

c. Policy option 3:

Positive impacts of option 3

In all, this option achieves harmonisation to the extent needed to ensure the effective implementation of the tools envisaged in FICOD to supervise RCs and IGTs, whilst at the same time avoiding requirements that are likely to be either disproportionate or inadequate for a number of financial conglomerates. Moreover, the option is fully in line with the legal text of FICOD.

More specifically:

- a. the option allows the flexibility needed in respect of financial conglomerates that are different in size, group structures, business combinations, level of internal integration, and is therefore sufficiently risk-based and proportional;

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- b. Member States/competent authorities remain able to apply stricter or additional measures if they deem appropriate;
 - c. for those Member States where the supervision of risk concentration and intra-group transactions at the conglomerate level is based on extending sectoral regulation to the conglomerate as a whole, the option allows Member States/competent authorities, in line with FICOD, to keep following this approach and at the same time incentivises them to develop an approach based on supplementary tools, in addition to the sectoral ones;
 - d. the option easily adapts to supplement sectoral rules and reporting requirements that still are not completely harmonised in certain areas, such as monitoring of intra-group transactions in banking groups;
 - e. given that an internationally agreed framework for measuring and aggregating cross-sectoral risks is not well established at the time, the option allows authorities to develop and further refine methodologies that, once sufficiently established, can at a later stage be put down in a more binding regulation;
 - f. builds on the guidelines for conglomerate colleges.

Negative impacts of option 3

On the other hand, this option may entail more coordination costs for the relevant competent authorities that shall consult each other to specify risks and transactions to be reported for a specific financial conglomerate. However, these costs are deemed manageable, considering that:

- a. the JC is developing specific guidelines aimed at assisting authorities in the definition of coordination agreements (Joint Committee consultation on *Guidelines on the convergence of supervisory practices relating to the consistency of supervisory coordination arrangements for financial conglomerates*);
- b. most of the costs of coordination will emerge at the first application of the new standards, when coordination agreements will be amended to include oversight of risk concentration and intra-group transactions for financial conglomerates, but cost should be limited after that time.

Another negative impact is that this option is limited to reporting; it is not concerned with the actual assessment of the risk concentration by the involved competent authorities and the potential limits that apply on risk concentration.

Policy issue 3 – Coordinate provisions adopted pursuant to Articles 7 and 8 and Annex 2 FICOD – Content of the report on significant risk concentration and intra-group transactions

- a. Policy option 1:

This option does not trigger direct costs for competent authorities and financial conglomerates because no specific reporting obligations are added to the general FICOD rule that significant intra-group transactions and significant risk concentration need to be reported. Form and content of the reporting are left completely to the agreement of the competent authorities. This has the advantage that competent authorities can set up reporting arrangements that are as close as possible to the actual features and functioning of the financial conglomerates.

However, this option has some considerable indirect negative impacts. Besides stating explicitly that competent authorities have to agree on the form and content of the reporting, this option does not bring along much coordination of the provisions adopted pursuant to Articles 7 and 8 FICOD. Moreover, if the RTS intends to provide a methodology for competent authorities to establish supervisory arrangements for a particular financial conglomerate, competent authorities still lack guidance for setting up reporting requirements. This produces uncertainty for competent authorities and financial conglomerates and will require time and resources to negotiate the appropriate content of the reports on a case-by-case basis. The reports that result from this case-by-case process would not be easily comparable and would not enhance a level playing field for the financial conglomerates throughout the EU.

b. Policy option 2:

Since the adoption of the FICOD, the Member States have developed different reporting practices with respect to Articles 7 and 8 FICOD. The differences range from qualitative to quantitative reporting, or a mix of both, from sector-based reporting that has been widened to the conglomerate context to specific cross-sector reporting. Since the level 1 text of the FICOD is very on the requested reporting, the different reporting contents cannot per se be judged as negative.

This option has the advantage of putting existing practices into a common methodology and labelling them as common / good practices in the conglomerate supervision systems of the Member states. This will diminish the “negotiating time” between competent authorities and financial conglomerates when new supervisory arrangements need to be set up or when there is a wish to enhance existing supervisory arrangements. This option will also enhance the level playing field for conglomerates in the EU.

This option comes with certain direct costs. Conglomerates that were not used to report one or more of the contents listed in the relevant articles of the technical standards will need to introduce additional reporting requirement in their governance systems. This requires of course the necessary resources. Also, competent authorities will incur additional costs for analysing and following up on the reports.

As mentioned above, this option does not go as far as prescribing a detailed format (by way of templates) for the information that must be delivered to the competent authorities. The FICOD includes a specific mandate to develop template-like technical standards. This option

could also be considered a good intermediate step to gather experience with conglomerate reporting, which could later on, if considered appropriate, be developed into more detailed templates.

Policy issue 4 - Coordinate provisions adopted pursuant to Articles 7 and 8 and Annex 2 FICOD – Supervisory measures

a. Policy option 1:

This policy option is deemed to produce benefits whilst also being respectful of the current EU legislation for financial conglomerates.

By listing a range of supervisory measures deemed appropriate for the purpose of supervising risk concentration and intra-group transactions, and without affecting the ability of competent authorities to apply other, and possibly more stringent measures provided for by the national and EU legislative framework, the technical standards aims to increase the clarity and transparency of this regulatory framework. Besides general references to quantitative limits and qualitative requirements in Articles 7 and 8 and in Annex II FICOD, the FICOD does not mention any particular supervisory measure that the competent authorities should be empowered to adopt. Further detailing such measures would foster a level playing field with respect to supervisory measures towards financial conglomerates throughout the EU, and guide competent authorities regarding their use of supervisory measures.

At the same time, this option is not expected to produce additional costs compared to the current situation. As stated in Article 4 of the draft RTS, the supervisory measures shall be considered within the powers assigned to competent authorities by EU and national law. As such the RTS cannot create new supervisory powers or overrule existing national legislations. At the same time, the listed supervisory measures are expected to set a reference and a minimum standard to consider for changes to national legislative frameworks and supervisory practices and with that foster convergence of national legislation and supervisory practices of competent authorities.

b. Policy option 2:

This option is a varies from option 1 because not only those measures that are shared across financial sectors are listed but also measures that usually are in the remit of just one financial sector. As in option 1, also option 2 does not affect the national and European law concerning supervisory measures and the ability of the competent authorities to apply other measures, different from those listed in the technical standards, if provided for by the national or EU legislative framework.

However, the implementation of this option might face practical and legal obstacles because level 1 legislation with regard to supervisory measures is only little harmonised. Throughout the EU, supervisory measures are likely to divert, following different supervisory and regulatory approaches in Member States. The issue is in particular relevant, because

supervisory measures largely diverge across sectors, due to different developments of sectoral EU legislations in this respect, in particular in the banking and insurance sector.

Option 2 is not feasible, and in general, further significant progress towards a harmonisation of supervisory measures throughout the EU can only be achieved by level 1 legislative requirements, because technical standards may not implement “new” powers and may not include policy choices. Therefore, option 2 can in practice not provide more benefits than option 1. Given the legal and practical obstacles, it might prove less effective in eliminating uncertainties for conglomerates and authorities in respect of supervisory measures available.

4.2 Views of the Stakeholder Groups (SGs)

The ESAs sought the opinions of the ESAs' Stakeholder Groups. The EBA's Banking Stakeholder Group and the EIOPA's Insurance and Reinsurance Stakeholder Group provided their opinions.

4.2.1 The EBA's Banking Stakeholder Group (BSG) provided the below opinion.

“The EBA Banking Stakeholder Group (“BSG”) welcomes the opportunity to comment on the Consultation Paper JC/CP/2014/04 on Draft Regulatory Standards on Risk Concentration and Intra-Group Transactions Under Article 21a (1a) of the Financial Conglomerates Directive

This response has been prepared on the basis of comments circulated and shared among the BSG members and the BSG's Technical Working Group on Capital and Risk Analysis.

As in the past, the BSG supports an initiative that aims at harmonizing supervisory rules and practices across Europe, in order to ensure fair conditions of competition between institutions and more efficiency for cross-border groups. The BSG also expects these initiatives to facilitate data sharing between European supervisors and avoid reporting duplications for banks. However, the BSG identifies a number of issues which, unless properly addressed, could lead to unintended results.

General comments

Whilst the BSG welcomes the objective of clarifying which risk concentrations and intra-group transactions within a financial conglomerate should be considered as being significant, we judge that some clarifications are needed in the RTS to foster its consistent application throughout the EU. In particular, it would be advisable that “significant” concentrations and “significant” intra-group transactions be more precisely defined in the RTS so as to remove any ambiguity and, where relevant, to make them consistent with other existing regulations:

- as regards significant intra-group transactions, the threshold to be applied is already specified at Art. 8(2) of the FICOD (at least 5% of the total capital requirements at the level of a financial conglomerate);
- as regards significant risk concentrations, the RTS could refer to the large exposure threshold set out at Art. 392 of the CRR in the case of banking-led conglomerates (10% of the regulatory capital at the financial conglomerate level) or to the significant risk concentrations as defined at Art. 244 of directive 2009/138/EC in the case of insurance-led conglomerates (Solvency 2 directive);

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- to address any possible concern not already covered by the above criteria, the RTS could provide that financial conglomerates should add qualitative information on other significant intra-group and risk concentration exposures in their risk or internal control reports to be provided annually to the supervisory authorities.

The BSG considers that the RTS should refer as much as possible to the existing sectorial regulations and reporting requirements, so as to avoid inconsistencies in the regulation applicable to financial conglomerates:

- concentration risk and intra-group exposures definitions provided in the RTS should be aligned with those existing in sectorial regulations as required under Art. 7(5) and Art. 8(5) of the FICOD. It is consequently the BSG's view that the definitions provided in sectorial regulations should be used in the context of this RTS (e.g. the large exposure regime in the CRR; risk concentrations in Solvency 2, intragroup-transactions under the Solvency 2 regime, etc.);
- to avoid inconsistencies between regulatory reportings, information required from financial conglomerates should be grounded as much as possible on the existing sectorial reporting requirements. It should be clearly stated in the RTS that reportings required from financial conglomerates should be consistent with the existing sectorial supervisory reportings;
- Art. 2(1) and 2(2) of the RTS state that concentration with regard to liquidity and currency risks should be reported to supervisors. However, the RTS does not provide any clarifications on possible issues at the level of a financial conglomerate in relation to those risks, if any, and it does not include any definitions and relevant metrics to measure those risks throughout a financial conglomerate. The BSG considers that liquidity and currency risks should be removed from the RTS, unless clarifications are provided on issues that need to be specifically tackled at the level of a financial conglomerate in relation to those risks and on the relevant metrics to be used to measure those concentrations if they exist.”

4.2.2 The EIOPA's Insurance and Reinsurance Stakeholder Group (IRSG) provided the below opinion.

“The IRSG welcomes the opportunity to provide input to the ESAs' consultation on risk concentration and intra-group transactions under FICOD.

The IRSG welcomes the ESAs' approach to provide clarification and supervisory measures aimed at ensuring a consistent and harmonised application of FICOD. However, the IRSG believes that a number of considerations should be taken into account by the ESAs before finalising the draft RTS. For example:

- The ESAs should look at existing sectorial requirements addressing the issues of risk concentration and intra-group transactions. The ESAs should assess to which extent

existing rules can fulfil the current needs and therefore aim to rely as much as possible on such rules. Given that sectorial rules are aimed at ensuring harmonisation, such an approach would basically help address one of the key aims of the RTS.

- The RTS should therefore include a reference to already existing or currently under implementation legislation (e.g. Solvency II QRTs) and only introduce additional types of reporting requirements if there is a clear need and benefit. Therefore, when harmonisation is already ensured at a lower level (e.g. by the requirements set in Solvency II or CRD IV/CRR) the RTS should avoid duplication of work at the level of the supplementary supervision.
- Should the ESAs conclude that existing reporting requirements are not enough to fulfil the current scope, they should indicate the reasons for this in their final report and they should also indicate how any new reporting rules would interact with existing reporting requirements. For example, the IRSG believes that any new reporting requirements should allow for alignment with existing reporting requirements, at least in terms of frequency of reporting.
- The IRSG believes that regulated entities should be involved in all discussions with the coordinator and other relevant competent authorities on appropriate thresholds and content/form of any reports. In addition, any reporting of matters relating to the financial conglomerate supervision should be exclusively made to the coordinator of the conglomerate.

The IRSG finds that the scope of the draft regulatory technical standards is in line with the mandate defined in FICOD. The IRSG would however like to express concerns on two areas, namely:

- i. The current proposal still leaves room for local interpretation.

The IRSG believes that the proposal leaves room for interpretation by, for example, making reference to a number of sources of risk (e.g. liquidity, currency) and then mentioning that the measurement of risk concentration should not be limited to these sources (i.e. „without limitation“). The IRSG believes that such a provision can hinder the harmonisation objective and therefore the proposal should be reconsidered to ensure consistency and minimise risk of divergence.

- ii. The current proposal lacks appropriate interaction with similar provisions, part of other frameworks.

The concept and measurement of risk concentration is also part of the Solvency II framework, where risk concentration is part of the Market Risk module. The Solvency II approach foresees that capital requirements should be imposed on exposures which are above pre-defined thresholds for given levels of counterparty credit quality. In addition, Pillar 2 ORSA requires assessment, at group level, of risk concentrations.

In the current ESAs' proposal no reference is made to existing requirements and the introduction of criteria such as industry/currency/geographic exposures makes it very difficult to actually rely on already existing requirements. The IRSG therefore believes that existing rules should represent the starting point for assessing risk-concentration and the ESAs requirements should be able to interact with and even rely (where possible) on already existing sectorial requirements.

The IRSG believes that the criteria for identifying significant risk concentration and intra-group transactions should be drafted in a way that ensures interaction with already existing sectorial requirements. The ESAs should therefore first assess to which extent existing regulations fail to depict and address risks emerging from significant risk concentration and intra-group transactions. Once interaction with existing sectorial rules is understood, the ESAs should only try do address missing areas.

In addition, the IRSG believes that any reporting requirements added on top of existing sectorial reporting requirements should be implemented within a reasonable timeline, thus allowing enough time for implementation.

While the IRSG understands that it is not possible to set thresholds in the RTS, it believes that regulated entities should be involved in the discussions with the coordinator and other relevant competent authorities on appropriate thresholds and content/form of the significant intra-group transactions or risk concentration report.

As indicated in comments on previous points, reporting requirements should only be put in place to address areas where existing sectorial reporting rules are not enough. The RTS should therefore include a reference to already existing or currently under implementation legislation (e.g. Solvency II QRTs) and only introduce additional types of reporting requirements if there is a clear need and benefit.

An appropriate implementation timing should be included as part of the requirement to ensure harmonisation across member states.

The IRSG believes that where sectorial rules already address the need for transparency (and reporting) of risk concentration and intra-group transactions, no further requirements should be imposed on financial conglomerates. Should the ESAs consider that existing requirements do not appropriately fulfill the needs for supervision of risk concentration and intra-group transactions, any new requirements should be aligned as much as possible with existing requirements in terms of e.g. frequency so that existing requirements, although not perfect for fulfilling ESAs' needs, can to a large extent inform the additional reporting requirements.

The IRSG believes that interaction with existing sectorial requirements should be added as a criterion to assess the consequences and costs of various policy options. The IRSG actually believes that the inclusion of interaction with existing rules in the framework can only create a positive impact for both supervisors and industry.”

4.3 Feedback on the public consultation and on the opinion of the ESAs' Stakeholder Groups

The ESAs publicly consulted on the draft RTS contained in this paper. The consultation period lasted for three months and ended on 24 October 2014. Nine responses were received, eight of which were published on the websites of the EBA, EIOPA and ESMA.

This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them, where deemed necessary.

In many cases several industry bodies made similar comments or the same body repeated its comments in the response to different questions. In such cases, the comments, and the ESAs analysis are included in the section of this paper where the ESAs consider them most appropriate.

Changes to the RTS have been incorporated as a result of the responses received during the public consultation.

Summary of key issues and the ESAs' response

An account of the detailed comments received and the ESAs' responses to them is provided in the feedback table below.

Summary of responses to the consultation and the ESAs' analysis

<p align="center">Summary of Comments on Consultation Paper JC-CP-2014-04-Draft RTS on risk concentration and intra-group transactions under Article 21a (1a) of the Financial Conglomerates Directive</p>				
<p>EIOPA, EBA and ESMA would like to thank the EIOPA Insurance and Reinsurance Stakeholder Group, the EBA Banking Stakeholder Group, Allianz SE, German Insurance Association, Insurance Europe, European Association of Co-operative Banks, French Banking Federation and the Investment Management Association for their comments.</p> <p>The numbering of the paragraphs refers to the questions raised in Consultation Paper JC-CP-2014-04.</p>				
No.	Name	Reference	Comment	Resolution
1.	EIOPA Insurance and Re-insurance Stakeholder Group (IRSG)	General Comment	<p>The IRSG welcomes the opportunity to provide input to the ESAs' consultation on risk concentration and intra-group transactions under FICOD.</p> <p>The IRSG welcomes the ESAs' approach to provide clarification and supervisory measures aimed at ensuring a consistent and harmonised application of FICOD. However, the IRSG believes that a number of considerations should be taken into account by the ESAs before finalising the draft RTS. For example:</p> <p>The ESAs should look at existing sectorial requirements addressing the issues of risk concentration and intra-group transactions. The ESAs should assess to which extent existing rules can fulfil the current needs and therefore aim to rely as much as possible on such rules. Given that sectorial rules are aimed at ensuring harmonisation, such an approach would basically help address one of the key aims of the RTS.</p> <p>The RTS should therefore include a reference to already existing or currently under implementation legislation (eg Solvency II QRTs) and only introduce additional types of reporting requirements if there is a clear need and benefit. Therefore, when harmonisation is already ensured at a lower level (eg by the requirements set in Solvency II or CRD IV/CRR) the RTS should avoid duplication of work at the level of the supplementary supervision.</p>	<p>Sectoral requirements have been thoroughly considered, but cannot alone provide cross-sectoral consistency.</p> <p>The RTS makes multiple reference to existing sectoral legislation, e.g. in Art. 2 (2k, 2l, 4e) and Art. 3 (2f, 2g, 4d). For further clarification, a reference</p>

			<p>Should the ESAs conclude that existing reporting requirements are not enough to fulfil the current scope, they should indicate the reasons for this in their final report and they should also indicate how any new reporting rules would interact with existing reporting requirements. For example, the IRSG believes that any new reporting requirements should allow for alignment with existing reporting requirements, at least in terms of frequency of reporting.</p> <p>The IRSG believes that regulated entities should be involved in all discussions with the coordinator and other relevant competent authorities on appropriate thresholds and content/form of any reports. In addition, any reporting of matters relating to the financial conglomerate supervision should be exclusively made to the coordinator of the conglomerate.</p>	<p>has been included in the recital part of the draft RTS: <i>“The requirements of this Regulation build on the sectoral requirements on risk concentration and intra-group transactions, without prejudice to and duplication of these requirements.”</i></p> <p>A thorough analysis of impacts and interactions is included in the impact assessment.</p> <p>Annex II of Directive 2002/87/EC provides, that the coordinator shall define appropriate thresholds only after consultation with the other relevant competent authorities and the financial conglomerate itself. The ESAs agree that according to Articles 7(2) and 8(2) of FICOD, significant RC and IGT shall be reported to the coordinator (exclusively). For that reason they have agreed to delete the reference to “addressee” in Article 2(3) and 3(3) of the</p>
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				<p>draft RTS.</p> <p>In addition, the ESAs have decided to delete the reference to “<i>frequency</i>” in Article 2(3) and 3(3) of the draft RTS. Articles 7(2) and 8(2) FICOD provide that Member States shall require regulated entities/MFHC to report on a regular basis and at least annually any significant RC / IGT at the level of the financial conglomerate to the coordinator. It can therefore not add much consistency to state in the RTS that the coordinator and RCA shall agree on the frequency.</p>
		6.1	<p>The IRSG finds that the scope of the draft regulatory technical standards is in line with the mandate defined in FICOD. The IRSG would however like to express concerns on two areas, namely:</p> <p>i. The current proposal still leaves room for local interpretation.</p> <p>The IRSG believes that the proposal leaves room for interpretation by, for example, making reference to a number of sources of risk (e.g. liquidity, currency) and then mentioning that the measurement of risk concentration should not be limited to these sources (i.e. „without limitation“). The IRSG believes that such a provision can hinder the harmonisation objective and therefore the proposal should be reconsidered to ensure consistency and minimise risk of</p>	<p>In order to allow for supplementary supervision, which is appropriate with respect to the specific risk profile of a financial conglomerate, maximum harmonisation seems neither achievable nor appropriate.</p> <p>Moreover, the ESAs mandate was to further</p>

			<p>divergence.</p> <p>ii. The current proposal lacks appropriate interaction with similar provisions, part of other frameworks.</p> <p>The concept and measurement of risk concentration is also part of the Solvency II framework, where risk concentration is part of the Market Risk module. The Solvency II approach foresees that capital requirements should be imposed on exposures which are above pre-defined thresholds for given levels of counterparty credit quality. In addition, Pillar 2 ORSA requires</p>	<p>specify and enhance convergence, rather than to prescribe every single type of risk. The sectoral directives further detail many risks; and not all these risk and definitions are harmonised between sectors.</p> <p>The ESAs agree, however, that the terms liquidity and currency risks, which the draft RTS introduced, provide too much room for interpretation and do therefore not foster consistency. The ESAs have therefore decided to delete the reference to “<i>including, without limitation, from liquidity risk and currency risk</i>”.</p> <p>The RTS makes multiple reference to existing sectoral legislation, e.g. in Art. 2 (2k, 2l, 4e) and Art. 3 (2f, 2g, 4d). It makes clear with these references that sectoral legislation should be the starting point for</p>
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			<p>assessment, at group level, of risk concentrations.</p> <p>In the current ESAs' proposal no reference is made to existing requirements and the introduction of criteria such as industry/currency/geographic exposures makes it very difficult to actually rely on already existing requirements. The IRSG therefore believes that existing rules should represent the starting point for assessing risk-concentration and the ESAs requirements should be able to interact with and even rely (where possible) on already existing sectorial requirements.</p>	<p>assessing risk-concentration and intra-group transactions.</p> <p>The ESAs agree that the reference to "<i>geographical areas or industry sectors</i>" and "<i>liquidity and currency risk</i>" leaves significant room for interpretation and does not foster convergence. They have therefore decided to delete these references.</p>
		6.2	<p>The IRSG believes that the criteria for identifying significant risk concentration and intra-group transactions should be drafted in a way that ensures interaction with already existing sectorial requirements. The ESAs should therefore first assess to which extent existing regulations fail to depict and address risks emerging from significant risk concentration and intra-group transactions. Once interaction with existing sectorial rules is understood, the ESAs should only try to address missing areas.</p> <p>In addition, the IRSG believes that any reporting requirements added on top of existing sectorial reporting requirements should be implemented within a reasonable timeline, thus allowing enough time for implementation.</p>	<p>The ESAs note that given the inconsistencies in the sectoral directives supplementary supervision of RC and IGT cannot be addressed with a one size fits all approach. Coordinators and other relevant supervisory authorities rather have a prerogative to define types of significant RC and IGT to be reported.</p> <p>FICOD requires RC and IGT to be reported at least annually. Beyond that, the ESAs consider that it is not</p>

			<p>While the IRSG understands that it is not possible to set thresholds in the RTS, it believes that regulated entities should be involved in the discussions with the coordinator and other relevant competent authorities on appropriate thresholds and content/form of the significant intra-group transactions or risk concentration report.</p>	<p>possible to pre-define time periods for implementation of information, since this is a prerogative of coordinators and relevant competent authorities. Different frequencies can have different reasons given the circumstances of the individual case and may consequently vary in terms of timing allowed for delivery of the information.</p> <p>Annex II of Directive 2002/87/EC already provides, that the coordinator shall define appropriate thresholds only after consultation with the other relevant competent authorities and the financial conglomerate itself.</p>
		6.3	<p>As indicated in comments on previous points, reporting requirements should only be put in place to address areas where existing sectorial reporting rules are not enough. The RTS should therefore include a reference to already existing or currently under implementation legislation (e.g. Solvency II QRTs) and only introduce additional types of reporting requirements if there is a clear need and benefit.</p>	<p>The RTS makes multiple reference to existing sectorial legislation, e.g. in Art. 2 (2k, 2l, 4e) and Art. 3 (2f, 2g, 4d). It makes clear with these references that</p>

			<p>An appropriate implementation timing should be included as part of the requirement to ensure harmonisation across member states.</p>	<p>sectoral legislation should be the starting point for assessing risk-concentration and intra-group transactions.</p> <p>If adopted by the European Commission, the RTS will become binding in the same way across all member states, see above.</p>
		6.4	<p>The IRSG believes that where sectorial rules already address the need for transparency (and reporting) of risk concentration and intra-group transactions, no further requirements should be imposed on financial conglomerates. Should the ESAs consider that existing requirements do not appropriately fulfill the needs for supervision of risk concentration and intra-group transactions, any new requirements should be aligned as much as possible with existing requirements in terms of e.g. frequency so that existing requirements, although not perfect for fulfilling ESAs' needs, can to a large extent inform the additional reporting requirements.</p>	<p>Article 21a (1a) of Directive 2002/87/EC provides that the draft RTS shall ensure consistent application of Articles 2, 7, 8 and Annex II of Directive 2002/87/EC, which cannot be accomplished on a mere sectoral level. The ESAs believe that the draft RTS strikes a balance in order to prevent supervisory arbitrage and allow for conglomerate specific supplementary supervision.</p>
		6.5	<p>The IRSG believes that interaction with existing sectorial requirements should be added as a criterion to assess the consequences and costs of various policy options. The IRSG actually believes that the inclusion of interaction with existing rules in the framework can only create a positive impact for both supervisors and industry.</p>	<p>The ESAs are legally bound by the mandate of Art. 21a (1a) of Directive 2002/87/EC. The mandate requires the ESAs to</p>

				ensure consistent application of legislation, which applies cross-sectorally.
2.	Allianz SE	General	<p>The draft RTS are designed to foster a more harmonized approach with respect to supervisory measures. However, harmonization in itself is only a limited indicator for the quality of a supervisory regime. Therefore, where harmonization leads to additional duties for the regulated entities, it should be supported by an analysis justifying the supervisory need for such additional regulation and explaining why harmonization of e.g. reporting requirements at a lower level would not be more appropriate. Given that Supervisory Authorities are strictly bound to the principle of legality, supervisory measures should be limited to those applicable to the respective sector.</p> <p>In order to achieve the goal of a harmonized regulatory regime, it is necessary to be sufficiently precise with respect to those items that are being harmonized. For example, the proposed regulation in Article 3 No. 5 of the Draft RTS, pursuant to which “Different transactions linked to each other in terms of time, function and planning shall be considered as one single transaction.” is not precise with respect to the question, how many of those links are necessary to trigger the consolidation of various transactions into one transaction. Further, a clarification would be desirable that only transactions concluded between the same legal entities are potentially subject to consolidation.</p>	<p>Article 21a (1a) of Directive 2002/87/EC provides that the draft RTS shall ensure consistent application of Articles 2, 7, 8 and Annex II of Directive 2002/87/EC. The ESAs believe that this cannot be accomplished only on the basis of the different existing sectoral legislation. The ESAs believe that the draft RTS strikes a balance in order to prevent supervisory arbitrage and allow for conglomerate specific supplementary supervision.</p> <p>The ESAs agree that the draft RTS should be clarified with respect to different transactions linked to each other.</p> <p>Article 3 (5) of the draft RTS has accordingly been replaced with the following wording: “<i>Transactions that</i></p>

			<p>Finally, reporting of risk concentration and intra-group transactions should be aligned to the greatest extent possible with the respective SII reporting (QRTs), this at least in terms of scope, content, frequency and channel of communication.</p> <p>The regulated entities or mixed financial holding companies should be involved in the discussions with the coordinator and the other relevant competent authorities on appropriate thresholds and content/form of the significant intra-group transactions or risk concentration report. Any reporting of matters relating to the financial conglomerate supervision should be exclusively made to the Coordinator (e.g. BaFin, in the case of Allianz).</p>	<p><i>are executed as parts of a single economic operation, shall be summed up for the purpose of calculating the thresholds pursuant to Article 8 (2) of Directive 2002/87/EC.”</i></p> <p>The RTS makes multiple reference to existing sectoral legislation, e.g. in Art. 2 (2k, 2l, 4e) and Art. 3 (2f, 2g, 4d).</p> <p>Annex II of Directive 2002/87/EC provides, that the coordinator shall define appropriate thresholds only after consultation with the other relevant competent authorities and the financial conglomerate itself.</p>
		6.1	See General Comment	
		6.2	<p>Again and as a general remark: In the interest of legal certainty and practicability, it would be appreciated to define more clearly the various items.</p> <p>Our expectation would be that the text is providing more details and enables the supervised entities to plan on the reporting requirements with a significant lead time (12 month +) in normal course of action.</p>	<p>The RTS makes multiple reference to existing sectoral legislation, e.g. in Art. 2 (2k, 2l, 4e) and Art. 3 (2f, 2g, 4d). It makes clear that sectoral legislation should be the starting point</p>

			<p>In any event, the RTS should include a reference to already existing or currently implemented regulatory standards (e.g. Solvency II QRTs) and only allow additional reporting requirements, if there is a clear benefit (see also General Remark).</p> <p>In particular, we would expect more details especially with respect to the following topics:</p> <p>with regard to significant risk concentrations:</p> <p>In order to facilitate processes, we strongly recommend to check European reporting requirements against existing national or European reporting requirements to avoid double-reporting. In addition, the scope of risk types to be taken into account should be clarified considering existing local requirements. So Article 2, No. 1 explicitly names liquidity and currency risks and could - and depending on its exact interpretation – encompass other risk types as well. (See last part of first paragraph: “[Risk exposure] may arise ... , without limitation, from liquidity risk and currency risk.”) Depending on the interpretation by local regulators, this article could result in considerable more reporting requirements for other risk types with unclear benefit.</p>	<p>for assessing risk-concentration and intra-group transactions and that double reporting should be avoided.</p> <p>The ESAs believe that the draft RTS strikes a balance in order to foster a consistent cross-sectoral approach to prevent supervisory arbitrage and still allow for conglomerate specific supplementary supervision.</p> <p>The ESAs have decided to delete the reference to “<i>geographical areas or industry sectors</i>” and “<i>liquidity and currency risk</i>”, please see above.</p>
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			<p>with regards to significant intra-group transactions</p> <p>We recommend to align European reporting requirements with local reporting requirements as far as possible: The scope for significant intra-group transactions of Article 3, No. 1 seems much broader than financial transactions, for example, it contains the “provision of management, back office or other services”- with questionable benefit. As mentioned in the General Remarks, in case of reinsurance e.g. it remains unclear if and which individual transactions will be deemed as unit.</p>	<p>The ESAs have decided to clarify the reference to “<i>different transactions linked to each other</i>”, please see above.</p>
		6.3	<p>Supervisors should thoroughly examine existing regulatory (insurance and banking regulation) and statutory annual report requirements (IFRS, local GAAPs) before introducing any new requirements. Only in areas where existing information – possibly to be drawn from different sources and authorities – is not sufficient to identify significant risk concentration and significant intra-group transaction, additional information should be requested in separate report (see also General Remark).</p>	<p>Article 21a (1a) of Directive 2002/87/EC provides that the draft RTS shall ensure consistent application of Articles 2, 7, 8 and Annex II of Directive 2002/87/EC. The ESAs believe that this cannot be accomplished only on the basis of the different existing sectoral legislation. The ESAs believe that the draft RTS strikes a balance in order to prevent supervisory arbitrage and allow for conglomerate specific supplementary supervision.</p>
		6.4	<p>The supervisory measures of Article 4 include</p> <p>“(c) to require regulated entities or mixed financial holding companies to report more frequently than annually on risk concentration and intra-group transactions; ...</p>	<p>Article 4 of the draft RTS relates to Article 16 of Directive 2002/87/EC, which required necessary measures to be required</p>

			<p>(e) to require additional reporting on risk concentration and intra-group transactions of the financial conglomerate; “</p> <p>As stated above, regulators should first leverage on available information. Without this check, measures (c) and (e) seem too far reaching and will create additional regulatory burden without a real benefit.</p>	<p>where RC or IGT are a threat to a regulated entities financial position. Given that a threat to the financial position of a regulated entity is a very serious incident, the ESAs consider that a more frequent than annual reporting or additional reporting is not a too far reaching measure and that it can have benefits e.g. to have more current information on the situation of the regulated entity.</p>
		6.5	<p>It would be desirable to define the concrete benefit of the proposed RTS from the regulator’s perspective. From a regulated entity’s perspective the key aspects include legal certainty, practicability and proportionality.</p> <p>The section 5.5.2 in our view does not appropriately appreciate the benefit of clear definitions under a) and understates the negative economic impact of the ambiguity under c). The “flexibility” quoted under the benefits of c) in fact also results in non-comparability as a negative side-effect.</p>	<p>The IA provides various references to costs and benefits for supervisors, which the ESAs considered. he ESAs also re-considered the assessment made under section 5.5.2 and concluded that it appropriately reflects costs and benefits of the different options.</p>
3.	German Insurance	General Comment	<p>The draft RTS are designed to foster a more harmonized approach with respect to supervisory measures.</p>	<p>Article 21a (1a) of Directive 2002/87/EC provides that</p>

	Association		<p>However, harmonization should not lead to additional burdens for the regulated entities. Therefore, we particularly do not see the necessity to impose reporting requirements with a level of granularity as stipulated in paragraph 4 of Articles 2 and 3. This is hardly consistent with the goal to establish an approach which ensures that at least standardized minimum information is provided to the coordinator. Reporting of risk concentration and intra-group transactions should be aligned to the greatest extent possible with sectoral requirements, e.g. the SII reporting (QRTs at least in terms of scope, content, frequency and channel of communication).</p> <p>Moreover, both the definition of risk concentrations and ITGs and the supervisory measures should defer to sectoral requirements to the largest possible extent.</p> <p>In order to meet the goal of a harmonized regulatory approach, it is necessary clarify some issues. For example, the proposed regulation in Article 3 No. 5 of the Draft RTS, pursuant to which “Different transactions linked to each other in terms of time, function and planning shall be considered as one single transaction. “ remains vague with respect in terms of which links would trigger the consolidation of various transactions into one transaction. Furthermore, it is not clear whether only transactions concluded between the same legal entities are potentially subject to consolidation.</p> <p>Finally, the regulated entities or mixed financial holding companies should be involved in the discussions with the coordinator and the other relevant competent authorities on appropriate thresholds and content/form of the significant intra-group transactions or risk concentration report. Any reporting of matters relating to the financial conglomerate supervision should be exclusively submitted to the Coordinator.</p>	<p>the draft RTS shall ensure consistent application of Articles 2, 7, 8 and Annex II of Directive 2002/87/EC. The ESAs believe that this cannot be accomplished only on the basis of the different existing sectoral legislation. The ESAs believe that the draft RTS strikes a balance in order to prevent supervisory arbitrage and allow for conglomerate specific supplementary supervision.</p> <p>Annex II of Directive 2002/87/EC provides, that the coordinator shall define appropriate thresholds only after consultation with the other relevant competent authorities and the financial conglomerate itself.</p>
		6.1	n/a	
		6.2	Again and as a general remark: In the interest of legal certainty and practicability, it would be appreciated to define more clearly the various items. Our expectation would be that the text is providing more details and enables the supervised entities to plan on the reporting	If adopted by the European Commission, the RTS will become binding in the

			<p>requirements with a significant lead time (12 month +) in normal course of action.</p> <p>In any event, the RTS should include a reference to already existing or currently implemented regulatory standards (e.g. Solvency II QRTs) and only allow additional reporting requirements, if there is a clear rationale (see also General Remark).</p> <p>In particular, we would expect more details especially with respect to the following topics:</p> <ul style="list-style-type: none"> • significant risk concentrations: <p>In order to facilitate processes, , we strongly recommend to check European reporting</p>	<p>same way across all member states.</p> <p>Article 21a (1a) of Directive 2002/87/EC provides that the draft RTS shall ensure consistent application of Articles 2, 7, 8 and Annex II of Directive 2002/87/EC. The ESAs believe that this cannot be accomplished only on the basis of the different existing sectoral legislation.</p> <p>The RTS makes multiple reference to existing sectoral legislation, e.g. in Art. 2 (2k, 2l, 4e) and Art. 3 (2f, 2g, 4d). It makes clear that sectoral legislation should be the starting point for assessing risk-concentration and intra-group transactions and that double reporting should be avoided.</p> <p>The ESAs have agreed to delete the references to</p>
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		<p>requirements against existing national or European reporting requirements to avoid overlaps. In addition, the scope of risk types to be taken into account should be clarified. For instance, Article 2, paragraph 1 explicitly mentions liquidity and currency risks and could –depending on its exact interpretation – encompass other risk types as well. (See last part of first paragraph: “[Risk exposure] may arise ... , without limitation, from liquidity risk and currency risk.”) Depending on the interpretation by local regulators, this article could result in considerable more reporting requirements for other risk types.</p> <ul style="list-style-type: none"> • significant intra-group transactions <p>We recommend to align European reporting requirements with local reporting requirements as far as possible: The scope for significant intra-group transactions of Article 3 paragraph 1 seems much broader than financial transactions, for example, it contains the “provision of management, back office or other services”- with questionable benefit. As mentioned in the General Remarks, in case of reinsurance e.g. it remains unclear if and which individual transactions will be deemed as a unit.</p>	<p>currency and liquidity risk, as well as to geographical areas or industry sectors, pls. see above.</p> <p>The ESAs have agreed to clarify the meaning of this reference. Pls. see response above regarding different transactions which are linked to each other.</p>
	6.3	<p>Supervisors should thoroughly examine existing regulatory (insurance and banking regulation) and statutory annual report requirements (IFRS, local GAAPs) before introducing any new requirements. Only in areas where existing information – possibly to be drawn from different sources and authorities – is not sufficient to identify significant risk concentration and significant intra-group transaction, additional information should be requested in separate report (see also General Remark).</p>	See response above.
	6.4	<p>The supervisory measures of Article 4 include</p> <p>“(c) to require regulated entities or mixed financial holding companies to report more frequently than annually on risk concentration and intra-group transactions; ...</p> <p>(e) to require additional reporting on risk concentration and intra-group transactions of the financial conglomerate; “</p> <p>As stated above, regulators should first leverage on available information. Without this check, measures (c) and (e) seem too far reaching and will create additional regulatory burden</p>	See response above.

			without a real benefit.	
		6.5	<p>It would be desirable to define the concrete benefit of the proposed RTS from the regulator's perspective. From a regulated entity's perspective, the key aspects include legal certainty, practicability and proportionality.</p> <p>Section 5.5.2 does not appropriately appreciate the benefit of clear definitions under a) and understates the negative economic impact of the ambiguity under c). The "flexibility" quoted under the benefits of c) in fact also results in non-comparability as a negative side-effect.</p>	<p>The ESAs believe that Section 5.5.2 a) appropriately states the benefits of specifying thresholds, i.e. greater harmonisation and a minimised risk of diverging implementation and market distortion.</p> <p>The flexibility quoted under the benefits of c) does in the opinion of the ESAs not lead to significant non-comparability, because it provides a common basis on which types of risk concentration and intra-group transactions shall be identified and thresholds and periods for reporting shall be set.</p>
4.	Insurance Europe	General Comment	<p>Insurance Europe welcomes the initiative to ensure harmonization on the treatment of risk concentration and intra-group transactions (IGTs) for financial conglomerates, and the opportunity to comment on these draft RTS.</p> <p>It is felt necessary that supervisors should adopt a common approach when dealing with these</p>	

		<p>important aspects. However, we are concerned that these RTS might miss the harmonization purpose. Indeed, the wording used still leaves significant freedom for additional criteria or different approaches.</p> <p>For an RTS that aims at harmonising it is not very affirmative when terms like “in particular” and “may” are used inconsistently. Especially sentences ending with “take the following into account” imply that the list given is not exhaustive, and that the coordinator/undertaking could take other relevant considerations into account, leading to potential uneven playing field.</p> <p>In order to meet the goal of a harmonized regulatory approach, it is necessary to clarify ambiguous drafting. For example, the proposed regulation in Article 3 (5) of the draft RTS, pursuant to which “Different transactions linked to each other in terms of time, function and planning shall be considered as one single transaction.” remains vague in terms of which links would trigger the consolidation of various transactions into one transaction. Furthermore, it is not clear whether only transactions concluded between the same legal entities are potentially subject to consolidation.</p> <p>Although Insurance Europe welcomes the idea to foster a more harmonized approach with respect to supervisory measures at financial conglomerate level, we believe that this should not lead to additional burdens for the regulated entities and that supplementary supervision should build on existing sectorial requirements to the extent possible.</p> <p>Therefore, we do not see the necessity to impose reporting requirements with a level of granularity as stipulated in Articles 2(4) and 3(4). This is hardly consistent with the aim of establishing an approach which ensures that at least standardized minimum information is provided to the coordinator.</p> <p>Reporting of risk concentration and IGTs should be aligned to the greatest extent possible with existing sectorial requirements, e.g. the Solvency II reporting (QRTs) at least in terms of scope, content, frequency and channel of communication. Moreover, both the definition of risk concentrations and IGTs and the supervisory measures should defer to sectorial requirements to the largest possible extent.</p> <p>In our view the supervision of a conglomerate should be done according to the sectorial</p>	<p>The cautious wording reflects the discretion the Directive provides to competent authorities.</p> <p>Agreed. Please see comment above. Also transactions between different legal entities might be part of a single economic operation.</p> <p>The RTS does not impose any additional reporting requirements. It clarifies that certain minimum criteria should be considered when reporting.</p> <p>The financial</p>
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			<p>middle of the public consultation of the ITSs. Comments given to this consultation therefore come with a caveat that our positions may change depending on the contents of the ITSs related to Solvency II.</p> <p>Alignment of terms used for the administrative body.</p> <p>Terms used when referring to people effectively running the undertakings have not been aligned between the ESAs. However, using a new term such as “board of the directors, independent directors...” adds confusion and is not in line with terms used in similar papers from the ESAs. Proposal is to refer to the “administrative body” and then in a footnote explain that “In this document, “board” refers to the supervisory and/or managerial body in companies having a dual board structure and to the single administrative body in companies having a unitary board structure”. This will provide the stakeholders with a common approach and ensure that these RTSs do not contradict national company law.</p>	<p>The ESAs agree that the terms used for the administrative body can be improved. They have decided to refer to “<i>management body</i>”, which is used in Directive 2002/87/EC, instead. They have further clarified that management bodies pursuant to Article 3(1) of Directive 2013/36/EU and administrative, management and supervisory bodies pursuant to Article 40 of Directive 2009/138/EC are included in the reference to management body</p>
		6.1	<p>We believe that the proposed draft RTS are within the scope provided by Article 21a (1a) of FICOD. However, we fear that they might miss the harmonization purpose. We fear that the wording used still leaves a significant freedom for additional criteria or different approaches.</p> <p>On the other hand, the proposal made by the ESAs requires an identification of risk concentration on a much wider set of criteria than in other legislations, and still implying that</p>	<p>The list is not exhaustive and identifies the key items to be considered which provides for a level-playing field.</p> <p>The ESAs have deleted the references to currency and</p>

			<p>this list is not exhaustive. This is very concerning.</p> <p>For example, within the Standard Formula of Solvency II an aggregation is made of several market sub-risk modules (e.g. equity risk, property risk and credit risk) and is reconciled with the total amount of assets. Based on credit ratings, thresholds are identified and capital requirements are introduced for excess amounts above these thresholds in the market risk concentrations sub-module. Besides, in the ORSA (Pillar II) the group has to assess any risk concentrations and the appropriateness and riskiness of these exposures.</p> <p>In the current proposal new criteria are introduced requiring aggregations of risk concentrations across industry, currency, geographical areas, and industry sectors. Instead, the RTSs should build as much as possible on existing sectorial requirements and reporting.</p>	<p>liquidity risk. They have also deleted the reference to <i>“the same geographical areas and industry sectors”</i>.</p>
	6.2		<p>For the purpose of legal certainty and practicability, it would be appreciated to define more clearly the various items. Our expectation would be that the text is providing more details and enables the supervised entities to plan on the reporting requirements with a significant lead time (at least 12 months) in a normal course of action.</p> <p>In any event, the RTS should include an explicit reference to already existing or currently implemented regulatory standards (e.g. Solvency II QRTs) and only allow additional reporting requirements, if there is a clear rationale and benefit in terms of supervision (see also General Comments).</p> <p>In particular, we would expect a clearer wording especially with respect to the following topics:</p> <ul style="list-style-type: none"> • significant risk concentrations: <p>In order to facilitate processes, we strongly recommend checking first sectorial reporting requirements to avoid overlaps or inconsistencies. In addition, the scope of risk types to be taken into account should be clarified. For instance, Article 2, paragraph 1 explicitly mentions liquidity and currency risks and could, depending on its exact interpretation, encompass other risk types as well. (See last part of first paragraph: “[Risk exposure] may arise ... , without limitation, from liquidity risk and currency risk.”) Depending on the interpretation by local regulators, this article could result in considerable more reporting requirements for other risk</p>	<p>The reference to existing sectorial legislation is provided for in the RTS.</p> <p>Agreed. Please see comment above.</p>

			<p>types.</p> <ul style="list-style-type: none"> significant intra-group transactions <p>We recommend aligning with sectorial reporting requirements as far as possible. The scope for significant intra-group transactions of Article 3 paragraph 1 seems much broader than financial transactions; for example, it contains the “provision of management, back office or other services”- with questionable benefit. As mentioned in the General Comments, in case e.g. of reinsurance it remains unclear if and which individual transactions will be deemed as a unit.</p>	<p>Agreed. Please see comment above.</p>
		6.3	<p>Supervisors should thoroughly examine existing regulatory (insurance and banking regulation) and statutory annual report requirements (IFRS, local GAAPs) before introducing any new requirements. Only in areas where existing information – possibly to be drawn from different sources and authorities – is not sufficient to identify significant risk concentration and significant intra-group transaction in the financial conglomerate, additional information should be requested in separate report (see also General Remark).</p> <p>See also our General Comments and comments in 6.1. The reporting of information should not go beyond what is envisaged in the sectorial rules.</p>	<p>The mandate of Article 21a (1a) requires the ESAs to develop draft regulatory technical standards to coordinate the provisions adopted pursuant to Article 7 and 8 and Annex II. This shall ensure a consistent application of these Articles. The ESAs believe that the draft RTS strikes an appropriate balance between reporting requirements and a consistent application of Articles 2, 7 and 8 and Annex II FICOD.</p>
		6.4	<p>The supervisory measures of Article 4 include</p> <p><i>“(c) to require regulated entities or mixed financial holding companies to report more frequently than annually on risk concentration and intra-group transactions;</i></p> <p>...</p> <p><i>(e) to require additional reporting on risk concentration and intra-group transactions of the financial conglomerate; “</i></p>	<p>The RTS is fully taking into consideration and respecting the sectoral legislation</p>

			As stated above, regulators should first leverage on available information and align the process, contents, frequency, etc. as much as possible with sectorial requirements. This should be clarified in the RTSs. Otherwise, measures (c) and (e) could seem too far reaching and be potentially seen as creating additional regulatory burden without a significant benefit for supervisory purposes.	
		6.5	<p>It would be desirable to define the concrete benefit of the proposed RTS from the regulator's perspective. From a regulated entity's perspective, the key aspects include legal certainty, practicability and proportionality.</p> <p>Section 5.5.2 does not appropriately appreciate the benefit of clear definitions under a) and understates the negative economic impact of the ambiguity under c). The "flexibility" quoted under the benefits of c) in fact also results in non-comparability as a negative side-effect.</p>	The benefits are widely outlined in the cost benefit part.
5.	EBA Banking Stakeholder Group (BSG)	General Comment	<p>Whilst the BSG welcomes the objective of clarifying which risk concentrations and intra-group transactions within a financial conglomerate should be considered as being significant, we judge that some clarifications are needed in the RTS to foster its consistent application throughout the EU. In particular, it would be advisable that "significant" concentrations and "significant" intra-group transactions be more precisely defined in the RTS so as to remove any ambiguity and, where relevant, to make them consistent with other existing regulations:</p> <ul style="list-style-type: none"> - as regards significant intra-group transactions, the threshold to be applied is already specified at Art. 8(2) of the FICOD (at least 5% of the total capital requirements at the level of a financial conglomerate); - as regards significant risk concentrations, the RTS could refer to the large exposure threshold set out at Art. 392 of the CRR in the case of banking-led conglomerates (10% of the regulatory capital at the financial conglomerate level) or to the significant risk concentrations as defined at Art. 244 of directive 2009/138/EC in the case of insurance-led conglomerates (Solvency 2 directive); - to address any possible concern not already covered by the above criteria, the RTS could provide that financial conglomerates should add qualitative information on other 	<p>The Directive itself leaves discretion to national coordinators / relevant competent authorities to set specific thresholds.</p> <p>The RTS already covers qualitative reporting on</p>

			<p>significant intra-group and risk concentration exposures in their risk or internal control reports to be provided annually to the supervisory authorities.</p> <p>The BSG considers that the RTS should refer as much as possible to the existing sectorial regulations and reporting requirements, so as to avoid inconsistencies in the regulation applicable to financial conglomerates:</p> <ul style="list-style-type: none"> - concentration risk and intra-group exposures definitions provided in the RTS should be aligned with those existing in sectorial regulations as required under Art. 7(5) and Art. 8(5) of the FICOD. It is consequently the BSG's view that the definitions provided in sectorial regulations should be used in the context of this RTS (e.g. the large exposure regime in the CRR; risk concentrations in Solvency 2, intragroup-transactions under the Solvency 2 regime, etc.); - to avoid inconsistencies between regulatory reportings, information required from financial conglomerates should be grounded as much as possible on the existing sectorial reporting requirements. It should be clearly stated in the RTS that reportings required from financial conglomerates should be consistent with the existing sectorial supervisory reportings; - Art. 2(1) and 2(2) of the RTS state that concentration with regard to liquidity and currency risks should be reported to supervisors. However, the RTS does not provide any clarifications on possible issues at the level of a financial conglomerate in relation to those risks, if any, and it does not include any definitions and relevant metrics to measure those risks throughout a financial conglomerate. The BSG considers that liquidity and currency risks should be removed from the RTS, unless clarifications are provided on issues that need to be specifically tackled at the level of a financial conglomerate in relation to those risks and on the relevant metrics to be used to measure those concentrations if they exist. 	<p>significant IGT and RC, cf. Article 2 (4. e) and 3 (4. d).</p> <p>The RTS acknowledges the sectoral legislations in place and the supplementary nature of the financial conglomerates provisions.</p> <p>For further clarification, a reference has been included in the recital part of the draft RTS.</p> <p>The ESAs have agreed to delete the references to currency and liquidity risk, as well as to geographical areas or industry sectors, pls. see comment above.</p>
6.	European	6.1	Regarding the definition of "significant risk concentration" (Art 2), we are concerned about the	Contagion effects in a

	Association of Co-operative Banks		inclusion in its scope of the possibility of contagion effects within the financial conglomerate and the possibility of conflicts of interest. In our opinion, these should be addressed at a higher level.	Financial conglomerate are key risks to be monitored and are mentioned in Annex II of Directive 2002/87/EC.
		6.2	<p>According to our understanding, the goal of the RTS is twofold. On the one hand, the definition of significant risk concentration and significant intra-group transactions should be improved. On the other hand, the supervisory requirements according to Art. 7 and 8, and Annex II of the Financial Conglomerates Directive must be coordinated by the ESAs. In this regard, the ESAs have opted for a non-binding, non-exhaustive definition (Policy Option 2), which allows for a great level of discretion for the coordinator when it comes to the interpretation. The criteria put forward in the RTS will facilitate an individual interpretation for each financial conglomerate.</p> <p>While we understand the approach followed by the ESAs, we also believe that a level playing field must be guaranteed: the supervisory authorities of different financial conglomerates must therefore follow the same criteria when evaluating similar cases. A greater level of discretion should only be allowed for those elements related to the internal approaches, such as the risk management practices (similar to the separation between Pillars 1 and 2 in Basel III).</p> <p>We consider it important to guarantee a high degree of legal certainty for financial conglomerates. Therefore, and despite the broad definition chosen, clear requirements should be made. The responsibility to concretize these requirements lies with the supervisory authority and should not be passed on to the financial conglomerates subject to supervision.</p>	The RTS does promote the use of comparable criteria for the assessment of RC and IGT by national competent supervisory authorities.
		6.3	<p>Regarding the reporting requirements, we consider that a minimum level of harmonisation is required, especially in relation with the frequency of reporting and the reporting days, whether the supervised parent company is a bank, an insurance or a holding company. It should also be clarified which sectorial rules for the calculation of the corresponding exposure value should be followed in function of the type of financial conglomerate and the subject type of risk.</p> <p>However, burdensome, “granular reporting” (e.g. “break-down reporting” in Art. 2.4(b) of draft RTS) should be avoided, since it would be excessive and difficult to implement.</p>	The RTS sets out minimum criteria that should be considered for reporting purposes.

		6.4	<p>We believe that the provisions on governance and internal control laid out in the Financial Conglomerates Directive are enough and need not be complemented with additional constraints.</p> <p>Regarding the reporting frequency (Art. 4(c) of draft RTS) should not be higher than once a year.</p> <p>We are also concerned that the change in the provisions regarding the definition of thresholds (Art. 4(d) of draft RTS) would be detrimental to the level playing field that was achieved with the thresholds proposed in the Directive.</p> <p>Finally, we would like to highlight that the sole purpose of the RTS is to streamline the provisions regarding “significant” risk concentration and “significant” intra-group transactions. Therefore, a clear mention of “significant” should be inserted in order to avoid misunderstandings that would increase the reporting burden.</p>	<p>Annual reporting remains the minimum.</p> <p>The RTS does not define any specific Threshold.</p> <p>Agreed. A clarification was added in Section 4 (c) and 4 (e) of the draft RTS. The RTS does focus on “significant” RC and IGT.</p>
		6.5	n/a	
7.	French Banking Federation	General Comment	<p>Prior to responding in detail to the questions raised in the consultation, we would like to make some general remarks.</p> <p>We are particularly concerned about some key issues in relation to intra-group transactions and significant risk concentrations that are not addressed with enough clarity in the RTS, leaving interpretation to National Competent Authorities (NCA) or to the coordinator, while the JC’s mandate is to provide clarifications in those fields, including on definitions to be used. Since this consultation relates exclusively to significant risk concentration and significant intra group transactions, it is our view that some key notions should be more precisely defined in the RTS to foster a consistent application of the FICOD across the EU, in particular:</p> <p>- The term “significant” for both risk concentrations and intra-group transactions is not defined in the RTS. Even though broad lists of key considerations to be taken into account when assessing the significance of a risk concentration or of an intra-group exposure are provided, it is up to each NCA to eventually determine whether an exposure is significant or not. This lack</p>	<p>The RTS does provide a list of key criteria to be considered. Discretion given to coordinators and relevant competent authorities under FICOD (Annex II) does not allow for a more specific definition. The RTS takes the sectoral legislation fully into account.</p>

			<p>of clarity is not desirable in the regulatory field and may lead to various interpretation issues and will hinder the level playing-field in the EU;</p> <p>- Risk concentration types and intra-group exposures are broadly defined at Art. 2(1) and Art. 3(1) respectively. However the definitions set out in those articles may lead to diverging understandings of how they should apply in practice between supervisors and across the financial industries. In particular, the RTS should be aligned with the existing sectorial regulations as required under Art. 7(5) and Art. 8(5) of the FICOD and should clarify that the definitions provided in sectorial regulations are to be used in the context of this RTS (e.g. the large exposure regime in the CRR; risk concentrations in Solvency 2, intragroup-transactions under the Solvency 2 regime, etc.).</p> <p>On the other hand, while some of the key notions should be clarified, the draft RTS appears to require granular supervisory reportings in relation to both intragroup exposures and risk concentrations. It is our view, that, to avoid duplication and inconsistencies between regulatory reportings, information required from financial conglomerates should be grounded as much as possible on the existing sectorial reporting requirements. It should be clearly stated in the RTS that reportings required from financial conglomerates should be consistent with the existing sectorial supervisory reportings.</p> <p>Finally, it is our view that the RTS goes beyond the JC's mandate as provided in FICOD by giving specific powers to NCA to require that certain intra-group transactions of the financial conglomerate must be performed at arm's length terms.</p> <p>Moreover, the powers given to NCA to define thresholds on a case-by-case basis will be detrimental to the functioning of the level-playing field in the EU or even at national level. We suggest clarifying that the threshold mentioned at Art. 8 (2) of the FICOD with regard to intra-group transactions (5%) should apply.</p>	<p>For further clarification, a reference has been included in the recital part of the draft RTS</p> <p>The draft RTS does not extend powers to NCAs, but suggests that NCAs consider to use certain measures, if they are within the powers assigned to them by Union and national law. Besides, the draft RTS suggests that the measure should only be required for "<i>certain</i>" intra-group transactions, which implies that NCAs should analyse whether the respective measure is appropriate for a specific type of IGT.</p> <p>The power of national competent authorities to set specific thresholds is foreseen the Directive</p>
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			<p>The due date of the first reporting is not indicated. We seek for clarification. Besides, the frequency of reporting should be annual and the Joint Committee should provide a reporting template.</p>	<p>2002/87/EC and cannot be changed by delegated acts.</p> <p>Minimum reporting frequency remains annually.</p> <p>The mandate in Art. 21a (1a) FICOD does not facilitate a reporting template.</p>
		6.1	<p>The definitions of risk concentration and of intra-group exposures provided at Art. 2 (1) and 3 (1) respectively are quite broad, and many issues remain in the hand of the competent authority or coordinator (including setting a threshold). Besides, the definitions set out in those articles may lead to diverging understandings of how they should apply in practice. As required under Art.7 (5) and Art. 8(5) of the FICOD, the RTS should be aligned with the existing sectorial regulations and should clarify that the definitions provided in sectorial regulations are to be used in the context of that RTS (e.g. the large exposure regime in the CRR; risk concentrations in Solvency 2; intragroup-transactions under the Solvency 2 regime, etc.).</p> <p>The term “significant” itself is not defined in the RTS in relation to both risk concentrations and intra-group transactions. Even though broad lists of key considerations have to be taken into account when assessing the significance of a risk concentration or of an intra-group exposure are provided, it is up to each NCA / coordinator to eventually determine whether an exposure is significant or not. This uncertainty is not desirable in the regulatory field and may lead to various interpretation issues and will hinder the level playing-field in the EU.</p> <p>Concerning significant intra-group transactions, we are of the view that the threshold to be applied is already specified at Art. 8(2) of the FICOD (at least 5% of the total capital requirements at the level of a financial conglomerate) and that the reporting of this type of transactions should be the same as the existing ones in Member States where that provision is already in force.</p>	<p>The RTS provides for a list of criteria to assess significant RC and IGT. It fully respects existing sectorial provisions.</p> <p>The threshold in Art. 8 (2) is a fall back provision in case competent national authority does not set any threshold</p>

			<p>Finally, the RTS provides at Art. 3 (5) that “Different transactions linked to each other in terms of time, function and planning shall be considered as one single transaction.”</p> <p>This issue lacks precision, but could be detrimental in the context of recurring transactions.</p>	<p>Agreed. Please see comments above.</p>
		6.2	<p>The RTS provides lists of key considerations to be taken into account when assessing the significance of a risk concentration and of an intra-group exposure. However, it is up to each NCA / coordinator to eventually determine whether an exposure is significant or not.</p> <p>As outlined above, we are particularly concerned by the absence of clear definitions and predefined thresholds in the RTS. We are of the view that those uncertainties are not desirable in the regulatory field, especially where supervisory reportings are required on a regular basis. It will inevitably lead to various interpretation issues both among supervisors and in the industry which, as a result, may hinder the level playing-field in the EU. Moreover, from a practical standpoint, it will prevent financial conglomerates to clearly ascertain which exposures in the meaning of the FICOD need to be reported to supervisory authorities.</p> <p>An alternative and more desirable option would be to refer:</p> <ul style="list-style-type: none"> - for significant intra-group transactions, to the existing threshold in the FICOD (5% of capital requirements at the financial conglomerate level), - for significant risk concentrations, to the large exposure threshold set out at Art. 392 of the CRR in the case of banking-led conglomerates (10% of the regulatory capital at the financial conglomerate level) or to the significant risk concentrations as defined at Art. 244 of directive 2009/138/EC in the case of insurance-led conglomerates (Solvency 2 directive). 	<p>This threshold is anyhow mentioned in the Directive.</p> <p>Whilst using the sector definitions might increase legal clarity, it does not enhance consistency for financial conglomerates. Rather, banking led financial conglomerates would be treated as banks and insurance led financial conglomerates as insurance undertakings,</p>

			<p>To address any possible concern not already covered by the above criteria and to avoid possible cliff effects, the RTS could provide that financial conglomerate should add qualitative information on other significant intra-group and risk concentration exposures in their risk or internal control reports to be provided annually to the supervisory authorities.</p> <p>Besides, it seems to be suggested at Art. 2(1) and 2(2) of the RTS that concentration with regard to liquidity and currency risks should be reported to supervisors. However, the RTS does not provide any clarifications on possible issues to be tackled and monitored in relation to those risks at the level of a financial conglomerate, if any, and it does not include any definitions and relevant metrics to measure those risks across a financial conglomerate.</p> <p>The FICOD directive itself does not refer to liquidity and currency risks in the context of a financial conglomerate. We are consequently of the view that those references to liquidity and currency risks should be removed from the RTS, unless clarifications are provided on issues that needs to be specifically tackled at the level of a financial conglomerate in relation to those risks and on the relevant metrics to be used to measure those concentrations if they exist.</p> <p>Furthermore, the criteria contagion effect and conflict of interest for the definition of the concentration risk (art 2-2 g & i) and the intragroup transaction (art 3-2 b & d) should be removed. The concept are not precisely defined, there is room for interpretation.</p>	<p>which would counteract the objective of Directive 2002/87/EC.</p> <p>The RTS already covers qualitative reporting on significant IGT and RC, cf. Article 2 (4. e) and 3 (4. d).</p> <p>The ESAs have agreed to delete the references to currency and liquidity risk, as well as to geographical areas or industry sectors, pls. see above.</p> <p>The draft RTS requires coordinators and other RCA to take possible contagion effects into account when identifying types of significant RC. Contagion effects within a financial conglomerate are</p>
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				a key risk that deserves attention for assessment as mentioned in Annex II of Directive 2002/87/EC.
		6.3	<p>The information to be reported in the significant risk concentration reporting includes the following:</p> <ul style="list-style-type: none"> - significant risk concentration by counterparties and groups of interconnected counterparties, - geographical areas, - economic sectors, - currencies. <p>This reporting is very granular (by area / sector / per unit / currency) even if it only concerns significant risk concentrations. This concept remains unclear and at the discretion of coordinator and relevant authorities.</p> <p>As outlined at questions 1 and 2 above, some of the key notions should be clarified in the RTS prior to specifying additional detailed reporting requirements. The RTS provides a broad range of reporting requirements in relation to both intragroup exposures and risk concentrations but does not address the consistency issue of those requirements with the existing sectorial supervisory requirements. It is our view, that, to avoid duplication and inconsistencies between regulatory reportings, information required from financial conglomerates should be grounded on the existing sectorial reporting requirements and definitions as much as possible. It should be clearly stated in the RTS that definitions and concepts used in supervisory reportings at the financial conglomerate level should be consistent with those existing in the sectorial supervisory reportings.</p> <p>Besides, the frequency of reporting should be annual and the Joint Committee should provide a reporting template.</p>	<p>The ESAs have agreed to delete the references to currency and liquidity risk, as well as to geographical areas or industry sectors, pls. see above.</p> <p>The annual reporting frequency remains as a</p>

				minimum.
		6.4	<p>Some of the measures that the national competent authorities would be entitled to take in accordance with the draft RTS are "intrusive" and introduce an unnecessary duplication of regulations with the FICOD Directive itself that already sets out many provisions relating to governance and internal control This "gold plating" approach does not seem appropriate, particularly on these following issues:</p> <p>5</p> <p>(a) to require that certain intra-group transactions of the financial conglomerate shall be performed at arm's length or that intra-group transactions, which are not performed at arm's length, shall be notified;</p> <p>(b) to require that certain intra-group transactions of the financial conglomerate shall be approved through specified internal procedures with the involvement of the board of directors, independent directors or external experts of the financial conglomerate;</p> <p>(f) to require a strengthening of the risk management processes and internal control mechanisms of the financial conglomerate;</p> <p>Furthermore, according to the draft RTS, competent authorities would be entitled to define specific thresholds on a case-by-case basis to identify significant risk concentrations and significant intragroup transactions. As already outlined above, we are of the view that thresholds relating to intra-group and concentration exposures should refer to those already provided in the FICOD (Art. 7 and 8). In particular, the threshold on intra-group exposures already provided at Art. 8(2) of the FICOD is appropriate (5% of capital requirement see above). Introducing a lower threshold is not justified, as this would lead to possible level playing-field issues between financial conglomerates (depending on their coordinator and predominant sector) and across Member States.</p> <p>Finally, according to the draft RTS, the competent authorities are entitled to require financial conglomerates to report more frequently than annually. Since the RTS should focus on significant risk concentrations and significant intra group transactions, it would be advisable to modify those paragraphs as follows, otherwise the RTS would result in the production of</p>	<p>Please see comments above.</p> <p>The FICOD Directive itself provides for the discretion for national competent authorities to set specific thresholds.</p>

			<p>exhaustive reportings, more than once a year. Furthermore, it should be noted that, in general, it is not necessary to have a monitoring more frequently than every six months for this type of risk.</p> <p>(c) to require regulated entities or mixed financial holding companies to report more frequently than annually on significant risk concentration and significant intra-group transactions;</p> <p>(e) to require additional information on significant risk concentration and significant intra-group transactions of the financial conglomerate;</p>	<p>The minimum reporting frequency remains annually.</p> <p>The ESAs agree that the reporting can only encompass significant IGT and RC. They have amended Article 4 (c) and (e) of the draft RTS accordingly.</p>
		6.5	n/a	
8.	Investment Management Association	6.1	<p>Formally the draft regulatory technical standards do not exceed the scope of Article 21a (1a) of Directive 2002/87/EC. Providing a more precise formulation of intra-group transactions and risk concentrations is part of the Joint Committee's mandate according to Article 21a (1a) of Directive 2002/87/EC. Concerning the coordination of the provisions adopted pursuant to Articles 7 and 8 and Annex II of the Directive we have some doubts that the very granular list of obligatory disclosures under Article 2 Paragraph 4 Subparagraph (b) is necessary to coordinate the provisions adopted pursuant to Articles 7 and 8 and Annex II of Directive 2002/87/EC. Not all levels of granularity drafted by the Joint Committee might be necessary for coordinated supervision and obligatory application of all reporting requirements could even prevent a coordinated application of the provisions adopted pursuant to Articles 7 and 8 and Annex II of Directive 2002/87/EC.</p> <p>We would recommend reducing the list of mandatory disclosure to a breakdown of the significant risk concentration by counterparties and groups of interconnected counterparties. It should remain in the discretion of the coordinator to require further disclosures where</p>	<p>The ESAs consider the list of items to be reported as a minimum requirement to ensure consistent application of Articles 7 and 8 and Annex II of Directive 2002/87/EC.</p> <p>It remains the prerogative of the coordinator to require further information.</p>

			necessary, taking into account the principle of proportionality.	
		6.2	We appreciate that the list of subjects to be taken into account by regulators is not a comprehensive one. This particularly allows thresholds and reporting periods to be defined in a proportionate way. At the same time supervisors are still able to react to market developments in their jurisdictions and to ensure efficient supervision. We consider therefore the criteria appropriate, but not comprehensive.	Directive 2002/87/EC sets the legal boundaries.
		6.3	As stated in our reply to question 1 we do not have objections against the individual reporting items listed in Article 2 Paragraph 4 Subparagraph (b), but we do not consider the obligatory disclosure of all items by all entities as appropriate. Supervisors should retain the discretion to act in a proportionate manner.	The ESAs are mandated to develop draft RTS in order to ensure consistent application of Articles 2, 7 and 8 and Annex II FICOD. They consider that this requires at least a minimum level of reporting requirements.
		6.4	We consider the proposed set of supervisory measures as not comprehensive. It is important for supervisors and for entities subject to supervision that supervisory measures are applied in a proportionate way, because supervisors in different jurisdictions do have different legal powers and firms under supervision differ. A non-comprehensive set of measures will allow supervisors to act appropriately and we do not see the need to extend the list proposed by the Joint Committee.	The RTS fully respects any national law constraints.
		6.5	n/a	