

**Feedback on comments received from stakeholders to the EBA, EIOPA and ESMA's Joint Consultation Paper on its proposed response to the European Commission's Call for Advice on the Fundamental Review of the Financial Conglomerates Directive.**

**EBA, EIOPA and ESMA would like to thank all stakeholders who submitted their response to Joint Consultation Paper JC CP 2012 01**

**List of respondents:**

APG Algemene Pensioengroep N.V., MN, PGGM and Syntrus Achmea;  
Aviva;  
British Bankers' Association;  
Danish Shareholders Association;  
EIOPA Insurance and Reinsurance stakeholder group (IGSC);  
EIOPA Occupational Pensions stakeholder group (OPSG);  
European Banking Federation (EBF);  
European Central Bank (ECB);  
European Association of Co-operative Banks (EACB);  
European Federation for Retirement Provision – EFRP;  
European Federation of Financial Services Users (EuroFinuse);  
European Private Equity and Venture Capital Association (EVCA);  
European Systemic Risk Board (ESRB);  
French Banking Federation;  
German Insurance Association;

German Banking Industry Committee;  
Group Deutsche Börse;  
Hermes;  
HSBC;  
Insurance Europe;  
Lieve Lowet, Partner, ICODA European Affairs;  
MACIF;  
Pensionskasse der Mitarbeiter der Hoechst-Gruppe VVaG;  
Regulatory Risk Department Baillie Gifford & Co;  
The Goldsmiths' Company

All respondents agreed to have their responses published on the ESAs respective public websites.

	<b>Stakeholder's Comments</b>	<b>ESAs assessment</b>	<b>Change to ESA's Advice made</b>
	<p><b>General Comments:</b></p> <p>Stakeholders welcomed the opportunity to provide responses to the three ESAs on the public consultation on the proposed response to the European Commission's Call for Advice on the fundamental review of the Financial Conglomerates Directive (FICOD).</p> <p>A number of respondents underlined that the Commission should take into consideration the outcome of the other in parallel on-going work streams at European level, amongst others the issue of Shadow Banking and the proposals shortly to be issued by the high level expert group on reforming the structure of the EU banking sector (Liikanen group).</p> <p>Several stakeholders emphasised that any review of the FICOD needs to carefully consider the principle of proportionality, in particular if the scope of the FICOD should be extended.</p> <p>Due to the on-going discussion with regard to the developments of the sectoral legislative framework on CRR/ CRD IV and Solvency II as well as the review of the IORP Directive, several respondents stressed the need to carefully take the outcome of these proposals into consideration before proposing any further amendments to the supplementary supervision of financial conglomerates.</p>	<ul style="list-style-type: none"> <li>• The ESAs agree that a reference to the principle of proportionality should be addressed in the advice.</li> <li>• The ESAs agree that the timing issue with respect to the in parallel still on-going review of the sectoral legislative frameworks (CRR, CRD IV/ Solvency II) should be explicitly mentioned in the advice.</li> </ul>	<ul style="list-style-type: none"> <li>• A clear reference to the principle of proportionality has been included in the advice.</li> <li>• The clear reference to timing with respect to the on-going review discussion on the sectoral legislative frameworks has been included in the executive summary of the advice.</li> </ul>

<p><b>Q 1</b></p>	<p><b><i>What should be the perimeter of supervision, when a financial conglomerate is supervised on a group wide basis?</i></b></p> <p>The majority of respondents viewed that unregulated entities should be in the focus so as to avoid an unlevel playing field. Also they supported to enlarge the perimeter of supervision to include insurance ancillary services. Although insurance representatives noted that such insurance ancillary entities will be covered under Solvency II.</p> <p>Further a majority of respondents preferred at that the scope should not be enlarged to include Institutions for Occupational Retirement Provisions (IORPs).</p> <p>Although a few stakeholders were in favour of including IORPs into the scope of the revised FICOD.</p> <p>Respondents stressed that any impact of modifying the scope of FICOD needs to be carefully assessed.</p>	<ul style="list-style-type: none"> <li>• The ESAs agree to clarify that in principle all special purpose vehicles should be covered under the perimeter as they may not always be captured by sectoral legislation.</li> <li>• The ESAs suggest that the EC should reassess the inclusion of IORPS following the outcome of review of the IORP Directive currently underway, and also to assess the a related qualitative impact assessment being undertaken by EIOPA.</li> </ul>	<ul style="list-style-type: none"> <li>• The Advice to clarify that in principle all special purpose vehicles should be covered under the scope of supplementary supervision as they may not always be captured by sectoral legislation.</li> <li>• The proposal to include IORPs at this juncture in the scope of FICOD to be removed.</li> </ul>
<p><b>Q 2</b></p>	<p><b><i>Given your experience and expertise, which legal entity in a conglomerate should be responsible and qualify for compliance with group wide requirements, i.e. which legal entity should be the responsible parent entity?</i></b></p> <p>The majority of respondents welcomed the intention to specify the criteria to assign a specific entity "the ultimate responsible entity" the responsibility of the FICOD requirements.</p>	<p>The ESAs acknowledge that national company law requirements might potential limit</p>	<p>The Advice to reflect that national company law need to be respected and</p>

	<p>A number of respondents cautioned on the possible implications of the proposal, given the implications for national company law. Any interference with national company law should be avoided. Further any duplication of measures that might already exist at sectoral level needs to be avoided.</p>	<p>the information ability of the “ultimate responsible entity”</p>	<p>that these might potentially limit the information ability of such a responsible entity, and suggest that the EC might wish to explore this dimension further.</p>
<p><b>Q 3</b></p>	<p><b><i>Given your supervisory experience and expertise, which requirements should be imposed on this qualified parent entity in the context of group wide supervision?</i></b></p> <p>A number of respondents cautioned on the possible implications of the proposals made with regard to interference with national company law. The necessity to respect the principle of proportionality was mentioned also in this respect. Further some respondents also emphasised the issue of confidentiality of information and the constraints from national legislation that need to be respected.</p>	<p>The ESAs acknowledge that national company law requirements need to be acknowledged and respected.</p>	<p>The Advice to reflect that national company law needs to be respected.</p>
<p><b>Q 4</b></p>	<p><b><i>Given your supervisory experience and expertise, which incentives (special benefits or sanctions) would make the enforcement of the group wide requirements more credible?</i></b></p> <p>Respondents largely support the recommendation made by the ESAs to develop an enforcement regime towards the ultimate responsible entity and its subsidiaries.</p>	<p>The ESAs note these comments.</p>	<p>No change needed</p>

<p><b>Q 5</b></p>	<p><b><i>When reflecting upon this advice, would supervisors in Europe need other or additional empowerment in their jurisdictions?</i></b></p> <p>A majority of respondents supported a more harmonised approach to be taken to strengthen supervisory empowerment of competent supervisory authorities as suggested in the ESAs Recommendation 8. However respondents pointed out the need to ensure no duplication of sectoral legislation.</p>	<p>The ESAs note these comments.</p>	<p>No change needed</p>
	<p><b><i>Annex H:</i></b></p> <p>Only a few stakeholders responded to the questions listed in the Annex accompanying the consultation. Generally the stakeholders viewed that National Supervisory Authorities were better placed to respond to these questions.</p> <p>Several respondents however mentioned that an extension of the scope of the FICOD will lead to an increase of compliance cost e.g. for IT, staff and other costs to deliver additional reports to National Supervisory Authorities.</p>	<p>The ESAs note these comments, and, as cited above, propose that IORPs will for the time being, remain outside the scope of the FICOD.</p>	<p>No further change needed.</p>