esma European Securities and Markets Authority | EBA European Banking Authority | eiopa European Insurance and Occupational Pensions Authority | JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

EIOPA-OPSG-12-07

Comments Template on EBA, EIOPA and ESMA's Joint Consultation Paper on its proposed response to the European Commission Call for Advice on the Fundamental Review of the Financial Conglomerates Directive	**Deadline: 13.08.2012 cob**
Stakeholder:	**Occupational Pensions Stakeholder Group (OPSG) - EIOPA**

The question numbers below correspond to Joint Consultation Paper JC CP 2012 01

Please follow the instructions for filling in the template:

- Do **not** change the numbering in column "Question".
- Please fill in your comment in the relevant row. If you have no comment on a question, keep the row empty.
- There are in total 10 questions. Please restrict responses in the row "General comment" only to material which is not covered by these 10 questions.
  - If your comment refers to multiple questions, please insert your comment at the first relevant question and mention in your comment to which other questions this also applies.
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Please send the completed template to joint-committee@eba.europa.eu, jointcommittee@eiopa.europa.eu, and joint.committee@esma.europa.eu, in MSWord Format, (our IT tool does not allow processing of other formats).

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CFA Questions	**Comments**
General Comments	OPSG welcomes the initiatives of the EU-Commission and the Joint Committee of the European Supervisory Authorities to review the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate. We believe that appropriate supervision of financial institutions is essential since it substantially contributes to the stability of the financial system in the EU.
1.	*What should be the parameter of supervision, where a financial conglomerate is supervised on a group wide basis?* *Should Institutions for Occupational Retirement Provision (IORPs) be included as part of a financial conglomerate?* Answer: OPSG disagrees with recommendation 1 to extend the focus of the FICO-Directive by including IORPs as part of a financial conglomerate for the following reasons: 1. The IORP Directive, which defines the general framework for supervision of Institutions for Occupational Retirement Provision, is currently under review. At this point in time, incorporating IORPs in the supplementary supervision of a financial conglomerate bears the risk of overlapping the existing regimes. This risk is particularly high at this point in time, as it is not clear what the general framework of the IORP-Directive will be. OPSG believes that a more logical sequence is required in this process: the general supervision framework for IORPs (i.e., IORP II Directive) should be determined before any supplementary regulatory regime for IORPs will be set.[1]

[1] **Minority view :** 4 OPSG members (1 industry, 1 academic and 2 beneficiaries) find that ordinary members of occupational pension schemes have only very vague ideas about the legal construction behind the scheme(s) they are members of. They will normally not know what the legal differences between an IORP and other pension schemes are. Citizens do not distinguish between "Financial Institutions" and other types of institutions authorized to receive and keep money. Citizens expect

	2. In many cases, IORPs are "not for profit" organizations, established on the basis of a social agreement, and implying the direct participation of social partners or employee representatives. Additionally, occupational pensions are part of the employer's total remuneration and are not financial products. Therefore, incorporating IORPs in the definition of "financial sector" is not appropriate. 3. In some cases IORPs may, in fact, justify being included under a supplemental supervisory framework[2], particularly when they are part of a financial conglomerate as defined by the Joint Forum[3]. However, financial conglomerates of this kind mainly provide workplace pensions in Member States where the pension vehicle is not defined as an IORP, according to national law. Additionally, pension funds set up by big insurance companies and banks are also outside of the scope of the IORP Directive. Hence, an extension of the scope of the FICO-Directive to IORPs as under Dir 2003/41/EC would fall short of these entities, which might justify being under the scope of supplementary supervision, as pursued through the FICOD revision. 4. Therefore, in relevant cases, IORPs, which might be legitimately considered as part of a financial conglomerate, would not be included under the scope of the revised FICO-Directive, because they would not be defined as IORPs according to relevant national law. Furthermore, by including IORPs under FICO-Directive would regulate just a very limited part of the

their government to protect them and look after these institutions regardless of they are credit institutions, IORPs, insurance companies or something else. One of the initiatives taken after the financial crisis to avoid a new crisis is the review of the FICO Directive. Citizens will find it difficult to understand that their biggest saving for the future – the occupational pension – only will be covered by the FICOD if it is with other institutions than IORPs. Consequently these members of OPSG find that IORPs should be covered by the FICOD II.

[2] There are cases (e.g., in France and Netherlands) where IORPs are managed by external providers which in turn could be classified as financial conglomerates.

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

	European IORPs, setting requirements which are only similar to those applying to other IORPs active in the EU. Hence, we believe that this would increase, rather than reduce, the risk of regulatory arbitrage within the EU. 5. In most Member States financial conglomerates and IORPs are completely separate legal entities where a transfer of assets from the IORP and vice versa is not allowed (complete ring-fencing). The relation between the sponsor company and the IORP is already governed by the current rules of the IASB, in particular the rules of IAS 19 R (International Accounting Standards Revised) which have recently been revised and will go into force as of 1 January 2013. The rules of IAS 19 R already prescribe which results and risks in relation to the IORP should be included in the balance sheet and profit and loss account of the sponsor/company. These results and risks will normally only exist if the contributions are an obligation of the sponsor. A revised FICO-Directive which would, contrary to these facts, assume a group-relation including inherent risks of double gearing and excessive leveraging (and, as a consequence, an obligation to consolidate the balance sheets of the sponsor/company and the IORP) would undermine these already existing accounting rules. This would in practice lead to a major confusion. 6. Furthermore, we believe that many risks being addressed by the FICO Directive (double gearing, excessive leveraging, etc.) are already adequately covered by the existing IORP Directive (2003/41/EC) and its ongoing revision. For example, Article 18 of the IORP Directive already regulates "intra-group transactions" between a company/sponsor and an IORP in an adequate manner. Supplementary supervision by means of the FICO Directive would imply double (and perhaps contradictory) supervision. 7. Article 4 of the revised FICOD Directive (FICOD 1[4]) states that "Member States shall require that all persons who

[4] Directive 2011/89/EU of 16 November 2011

	effectively run the insurance holding company or the mixed financial holding company are fit and proper to perform their duties". Applying this to IORPs might affect the participation of members, beneficiaries and social partners in the IORP governance structure. As stated in the "OPSG opinion on EIOPA's response to Call for Advice on the review of Directive 2003/41/EC (second consultation)", we believe that the level of fitness required to be shown depends on the nature and complexity of the activities. If the fit and proper test is adopted such that the qualification, knowledge and experience have to be "appropriate" to enable sound management, it is also very important that where there is a board, trustees, or other group of persons who effectively run the IORP, that the adequacy test be applied to the collective function and not to each individual component. For example, on a management board, it is acceptable and indeed useful, to have a person whose area of expertise is in finance, another whose is investment, another whose is legal, but that collectively the level of qualification knowledge and experience should be "appropriate".
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Annex H Questions	
General Comments	
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