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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:	German Insurance Association, Wilhelmstraße 43 / 43 G, 10117 Berlin	

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

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    - 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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CFA Questions	**Comments**
General Comments	The German Insurance Association appreciates the opportunity to comment on the JCFC's proposed response to the European Commission's Call for Advice on the Fundamental Review of the Financial Conglomerates Directive. When taking the FICOD under scrutiny it needs to be reflected that it is designed to supplement prudential legislation for financial conglomerates. It should address loopholes in the present sectoral legislation and be limited to the supervision of the specific complementary aspects of financial conglomerates in order to ensure sound supervisory arrangements with regard to financial groups with cross-sectoral financial activities. Instead, it should not lead to a duplication of requirements of sectoral supervision. Bearing this in mind, both the current version and the envisaged amendments of FICOD need to be justified by gaps and shortcomings in the sectoral provisions for credit institutions, insurance undertakings and investment firms. However, as stated in paragraph 21, the JCFC admits that the draft response does not anticipate the significant developments in sectoral legislation currently underway. As an example, forthcoming Solvency II and Basel III/CRD IV-requirements are already based on a group-wide perspective on risk and include cross-sectoral implications which largely obviate the need for additional requirements for financial conglomerates. Therefore, we believe that most of the recommendations stated in the draft response do not provide considerable value and lack a thorough investigation of corresponding gaps in the sectoral regimes. Beyond that, we would encourage a serious discussion about the necessity and the future of the FICOD once Solvency II and CRD IV are implemented. There are significant voices within the supervisory community claiming that insurance groups and insurance-led conglomerates basically have the same scope of application under Solvency II and FICOD and therefore will be subject to almost the same supervisory regime. Instead, we firmly believe that a comprehensive group-wide oversight with efficient supervisory colleges led by a responsible group supervisor is the key to ensure comprehensive and adequate supervision of financial conglomerates. Against this background, necessary improvements of supervisory coordination and cooperation and should be primarily incorporated in Solvency II and CRD IV instead of maintaining an additional layer of regulation which provides a questionable value. Moreover, more attention should be paid on the possible alignment of cross-sectoral prudential regulation. An alignment of the core principles of supervision for banks and insurance might contribute to a more comprehensive risk management framework for financial conglomerates while taking into consideration the differences of risks between the two areas of activity and the differences in internal harmonization in banking and insurance supervision. The core principles should preserve sectoral

	rules when dealing with capital adequacy and solvency issues. At least, the full implementation of Solvency II and Basel III/CRD IV should be waited for before new amendments are envisaged. This would help to reduce unnecessary burdens arising from duplicative supervisory procedures and optimize the supervisory resources.
1.	**Recommendation 1:** While we admit that the inclusion of ancillary insurance service undertakings in the definition of the financial sector seems to be consistent with the treatment of ancillary banking service undertakings, we don't see a reason for extending the scope of the FICOD by inclusion of IORPs and SPVs. As regards IORPs, we would like to state our preference for option 2. We do not see any merit to include IORPs in the scope of supplementary supervision since there is no indication that they pose material risks to financial conglomerates. IORPs are sufficiently regulated by Directive 2003/41/EC. We do expect that the current review of the IORP-Directive will eventually lead to a further harmonization with Solvency rules applicable to insurance undertakings. Against this background, it would make more sense to entirely incorporate the supervision of IORPs in the Solvency II framework in a medium-term perspective. This would ensure that all potential risks stemming from IORPs will be adequately covered by sector specific supervision rather than to add further supervisory requirements at conglomerate level. Apart from that, it needs to be noted that many IORPs are structured as mutual insurance companies. These companies can't pose additional risks to the group since they are owned by the members and beneficiaries. Furthermore, it is not clear how they should be integrated in the governance structure and the capital adequacy assessment of the conglomerate due to the lack of control and influence the head or the ultimate responsible entity can exercise on them. Paragraph 45 accurately states that SPVs according to Article 13 (26) of Directive 2009/138/EG are already subject to exhausting governance and reporting requirements. Therefore, we can't imagine what additional insights the inclusion of SPVs in the scope of supplementary supervision should provide. In particular, the explanatory text does not offer a reasonable conclusion which additional risks should be addressed by inclusion of SPVs. On the contrary, according to sector-specific regulation SPVs are required to be fully-funded at any time in order to meet potential obligations arising from the assumed underwriting risks.

	Recommendation 2: FICOD 1 extends the scope of sectoral group supervision to MFHCs. Thus, MFHCs can be approached as legal addressee for enforcing the group-wide supervisory requirements. It seems to be plausible to complete the list of regulated entities which could be subject to supplementary supervision accordingly. However, it is more important that always the undertaking will be addressed as head of the financial conglomerate which is designed and adequately equipped to execute the legal and supervisory group control. Paragraph 57 indicates that the policy measures envisaged for MAHCs and MAIHCs should be applicable to MFHCs, too. This would imply the creation of intermediate holding companies and the definition of "points of entry." We do not see why such measures should be necessary in a MFHC-group structure. **Recommendation 3:** According to Recommendation 3 the financial activities of a MAHC- or MAIHC-group should be subject to particular supervisory requirements although they do not qualify for a financial conglomerate. From a legal point of view, it is very questionable whether such an approach is covered by the rationale of the Financial Conglomerates Directive. Apart from the question whether those financial activities need additional regulation which goes beyond the solo supervision of the financial entities we believe that restricted regulation of MAHCs/MAIHCs should be addressed in a separate directive/regulation. As regards the envisaged toolkit we are concerned about the authorization to require the creation of intermediate financial holdings. As a principle, supervision should always be exercised based on existing company structures rather than to intervene in the board's competences and tailor a structure which fits best to supervisory convenience or needs.
2.	**Recommendation 4:** Currently, the supervisor is only allowed to address the regulated entity which is the head of the financial conglomerate (e.g. in order to exercise supplementary supervision to get information). However, depending on the groups' structure the regulated

	entity might not have the legal means under company law to receive the required information or to enforce the supervisory requirements within the group. Although supervisors might already today determine a mixed financial holding company as the head of the financial conglomerate, FICOD does not include clear provisions how to deal with group structures where the ultimate parent entity respectively the head of the financial conglomerate is not capable to steer and control the regulated entities belonging to the group. Therefore, we basically welcome the intention of the JCFC's recommendation to specify the criteria according to which an ultimate responsible can be designated based on the factual ability to comply with supervisory duties. We explicitly endorse the idea that the financial conglomerate might be granted to select the ultimate responsible entity itself (paragraph 81).
3.	**Recommendation 5:** Though we agree that the ultimate responsible entity should be held accountable for compliance with group wide supervisory requirements, we strictly oppose to add further capital management, reporting and governance requirements at conglomerate level. Regulated entities within a conglomerate are already subject to solo/group supervision and thus under permanent scrutiny with regard to their capital management policies. The sectoral prudential frameworks exhaustively provide for the consequences if violations of capital ratios on solo or group level occur. Imposing additional requirements on the level of the ultimate responsible entity and introducing new supervisory measures might be redundant or even inconsistent with sectoral rules. The extent of significant risk concentrations and intra-group transactions should contribute to the supervisor's understanding of the financial situation of credit institutions, insurance undertakings and investment firms which are part of a financial conglomerate, in particular as regards its solvency condition. The required information must be provided on a regular, at least yearly basis. However, the disclosure of any capital movement within the conglomerate would result in a permanent reporting, especially in large and complex groups. We don't believe that even an extensive interpretation of risk concentrations and intra-group transactions would justify reporting requirements with such an extensive level of detail. According to paragraph 92, the proposed enhancement of governance requirements is linked with the EBA-guidelines on internal governance. However, from the perspective of insurance dominated conglomerates, these guidelines can't serve as a blueprint without contradicting or even violating the governance requirements for insurers imposed by Articles 41-50 of Directive

	2009/138/EG. Apart from that, we believe that there is no need for implementing new governance requirements at conglomerate level. Each regulated entity within the conglomerate is subject to either Solvency II or CRD IV. Both frameworks are sufficiently aligned in our view. We understand that Solvency II will even provide for the extension of governance requirements to non-regulated entities if they might pose significant risks to the group. After all, we think that the implementation of a comprehensive group governance framework is already reality, at least from the perspective of an insurance dominated conglomerate.
4.	**Recommendation 6:** We fully subscribe to the view stated in paragraphs 109, 110 and 119 which are in line with our general comments. Even supervisors consider the sectoral-based approach to be sufficient and adequate for the supervision of financial conglomerates. Moreover, FICOD 1 empowers supervisors to apply the full range of sector-specific and supplementary supervision at the same time. Therefore, there is no need to maintain and extend a separate enforcement regime at FICOD-level which would include the very same tools already made available by Solvency II and CRD IV. In case of remaining differences in the enforcement and sanctioning regime which may give rise for arbitrage this should be primarily addressed by further alignment of the sectoral frameworks. **Recommendation 7:** This section deals with a corresponding enforcement regime towards MAHCs and MAIHCs. We refer to our comments to Recommendation 3. In particular, we reiterate our general concerns against creating intermediate holding companies.
5.	**Recommendation 8:** We agree that a harmonized approach between member states needs to be ensured with regard to the supervision of risk concentrations and intra-group transactions. Articles 7 (5) and 8 (5) of FICOD 1 already incorporated the legal basis for developing corresponding guidelines in order to meet that goal. However, since supervisory guidelines do not have a direct binding force it should be considered whether technical standards might be more suitable. In any case, guidelines or standards must be in line with the aligned Solvency II and CRD IV requirements in order to avoid duplications and inconsistencies. An extension of reporting obligations need to be avoided. The EIOPA-draft proposal of Level 3-guidance on supervision on risk concentrations and intra-group transactions might serve as an adequate blueprint in this context.

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Annex H Questions	
General Comments	
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