

**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:**

Pensionskasse der Mitarbeiter der Hoechst-Gruppe VVaG; Frankfurt/Main

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

**Please follow the instructions for filling in the template:**

- ⇒ Do not change the numbering in column "Question".
- ⇒ Please fill in your comment in the relevant row. If you have no comment on a question, keep the row empty.
- ⇒ There are in total 10 questions. Please restrict responses in the row "General comment" only to material which is not covered by these 10 questions.
  - If your comment refers to multiple questions, please insert your comment at the first relevant question and mention in your comment to which other questions this also applies.
  - If your comment refers to parts of a question, please indicate this in the comment itself.

**Please send the completed template to [joint-committee@eba.europa.eu](mailto:joint-committee@eba.europa.eu), [jointcommittee@eiopa.europa.eu](mailto:jointcommittee@eiopa.europa.eu), and [joint.committee@esma.europa.eu](mailto: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

In May 2012, the European Supervisory Authorities (ESA) launched the public consultation on the proposed response to the call for technical advice from the European Commission to the Joint Committee of the European Supervisors Authority (Sub Committee on Financial Conglomerates / JCFC) on the fundamental review of the Financial Conglomerates Directive (FICOD).

While preparing its final advice to the European Commission, the JCFC was also requested to comment on the scope of application of a FICOD II and to assess whether Institutions of Retirement Provision (IORPs) should in future fall within the scope of the Directive by including them within the definition of "financial sector".

As a German IORP, we welcome the opportunity to comment on this topic and present our point of view. With respect to the draft response of the JCFC and the proposed option 1 to include IORPs within the definition of "financial sector" and therefore within the scope of the FICOD II, we strongly challenge such considerations.

IORPs are not financial institutions because they are from its nature also embedded in the national labour and social law and should thus not be included within any definition of "financial sector". There is no need for harmonized security-levels between IORPs and financial institutions like for example insurance companies. There is no "level playing field", which could justify an option like the recommended one:

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IORPs, especially in Germany, act as social institutions because of a legal mandate and thus in public interest. Therefore, they are non-profit oriented in opposite to financial institutions that have to earn profit to satisfy their shareholders and offer their products on a competitive market and in an international periphery.

Moreover, IORPs as "mono-liners" only offer occupational retirement provision, pension promises that are offered from the employers to the employees as part of / in addition to their cash compensation. Therefore, the institutions and their products are subject to the national social and labour law of the member states, that has not been harmonized on the EU-level yet and for that reason as already mentioned fully remains under control of the member states. Financial institutions on the other side offer financial-products on the European Single Market as part of the free movement of services and are therefore already subject to the European regulation and especially the current FICOD. Considering these differences, there is no need for a harmonization by enlarging the scope of the FICOD because of the disparity of the offered products and the different national legal requirements that have to be noticed.

However, apart from the review of the FICOD, the European Commission is already operating a review of the so-called IORP-Directive 2003/41/EC "on the activities and supervision of institutions for occupational retirement provision" to achieve a further harmonization for IORPs on a European level. The inclusion of IORPs into the scope of FICOD before a final implementation of a revised IORP-(II)-Directive might lead to uncertainty, imbalances and disparity in case of the application of two possibly overlapping regimes.

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Taking a look at the current IORP-Directive, such considerations are quite comprehensible as various risks of the FICOD are already included within the IORP-Directive. Art. 18 f of the IORP-Directive for example covers the topic of IORP-investments to its sponsor-undertaking(s) that would inevitably also have to be included within the revised FICOD and would thus imply double (contradictory) supervision.

For these reasons, IORPs are neither part of the "financial sector" nor comparable to financial institutions and should therefore not be included within any definition of "financial sector". The FICOD should thus not be applied to IORPs.

Frankfurt am Main, July, 20, 2012

Pensionskasse der Mitarbeiter der Hoechst-Gruppe VVaG

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2.

3.

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<b>Annex H Questions</b>	
General Comments	
1.	
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