

Response to the Questions in the European Commission's Consultation Document on the Review of the FCD.

Question 1

For which of the following a review with respect to the transparency of group structures would be justified? Please select all that apply and explain why:

Yes for all conglomerates

Yes for all conglomerates larger than 100 billion euro total assets

Yes for all groups, banks or insurers or conglomerates

Yes for all groups larger than 100 billion euro total assets

No, I don't think that a review of transparency of group structures is justified

Why?

Answer

We agree that the group structures of a financial conglomerate need to be transparent.

However, existing sectoral legislation already provides the competent authorities with sufficient tools to obtain a comprehensive picture of the structures of the group to which the bank, insurance company or investment firm belongs. Where banks are concerned, reference can be made in particular to the following provisions laid down in Directive 2006/48/EC.

- Article 7 : Member states shall require applications for authorisation to be accompanied by a programme of operations setting out, inter alia, the types of business envisaged and the structural organisation of the credit institution.
- Article 22 : §1. Home Member state competent authorities shall require that every credit institution have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility , effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and adequate internal control mechanisms, including sound administrative and accounting procedures.
§2. The arrangements, processes and mechanisms referred to in paragraph 1 shall be comprehensive and proportionate to the nature, scale and complexity of the credit institution's activities. The technical criteria laid down in Annex V shall be taken into account.

Against this backdrop, we do not believe that the Financial Conglomerates Directives needs to be amended to allow competent authorities to obtain transparency about the group structures of a financial conglomerate.

Question 2

Do you think that a more in-depth investigation is justified with respect to the supervisory scope of supplementary supervision, especially in relation to the non-regulated parts of financial conglomerates? Please explain why.

Answer

One possible area which may require closer scrutiny from competent authority is liquidity risk, particularly where the entities concerned are linked to the banking leg of a financial conglomerate.

However, a legal European framework addressing liquidity risk is currently lacking. Our understanding is that initiatives are now being taken by the Basel Committee in this area, which will be implemented in the EU at sectoral level in the years to come.

It will need to be examined if further initiatives will need to be developed to address the liquidity situation of financial conglomerates – or part thereof – once liquidity risk and liquidity risk management will have been sufficiently harmonized across the European Union at sectoral level.

Some entities (hedge funds, trusts, pension funds, etc.) may bear risks that are similar to those taken by financial conglomerates. Some of these entities are linking up with banking or insurance companies, thereby creating new types of financial conglomerates. The scope of the FCD should therefore be extended to also cover these entities in line with G20 recommendations to provide all types of actors of the financial system with an effective supervision. Risks in FC are already well supervised by sectoral regulation without any need to be further strengthened. Increasing the supervisory framework for FC may lead to an unlevel playing field with non regulated entities that have no particular capital requirements. Before amending FCD, entities as hedge funds, trusts, pension funds which are not currently regulated should be regulated.

Question 3

In your opinion, would the debates on the definition of capital in the banking and insurance sector respectively, justify a more in-depth investigation of the cross-sectoral perspective ? Please explain why.

Answer

Cross-sectoral differences in the area of definition of capital, which are not justified by sectoral specificities, create distortions of competition across sectors, or render the underlying conceptual framework of the sectoral Directives incoherent. The only differences in capital definition that should be allowed would proceed from sectoral specificities and the nature of risks carried by either the banking industry or the insurance industry. The standardization of definition of capital may be counterproductive and lead to unforeseen and unintended consequences. The BNP Paribas “bancassurance” model of integrated banking and insurance businesses provides enhanced stability to the financial system as risks are correctly identified and managed. Moreover such a model provides better conditions to customers. That deserves to be taken into consideration.

More particularly, the current regulatory environment puts banks which have participations in insurance companies at a disadvantage compared to insurance companies investing in banks. This is due to the need for banks to deduct the full book value of these participations from their Own Funds In case they hold more than 10% of the insurance equity while Insurance firms have to apply the same rule only when they own more than 20% of the bank capital. As

observed in the IWCFC « Recommendations to address the consequences of the differences in sectoral rules on the calculation of own funds of financial conglomerates » (April 2008), « there is no explicit reason in the texts why the two thresholds for holding a banking institution are different whether the holder belongs to the banking or the insurance sector.

The IWCFC document makes an attempt to justify such discriminatory treatment in observing that « banks conduct many operations between themselves; accordingly the failure of one is deemed to have consequences on the many others which have interrelated operations with the former » We do not believe, however, this reason to be convincing. It should be accepted, instead, that the discrimination is due to historical reasons, which have become outdated.

In these circumstances, it would be appropriate for the CRD to be amended as that Member states, in line with the present wide spread but not uniform practice within the EU, would no longer be allowed to require from banks which are included in the supplementary supervision to deduct participations.

Question 4

With respect to the group wide remuneration policies in financial conglomerates, would you regard it as useful to consider the compatibility of these policies across the banking and insurance sectors within the conglomerates?

Answer

The need for a level playing field requires all financial institutions to be made subject to similar rules in the area of remuneration policies.

Sectoral rules on remuneration policies apply to every entity in the scope of consolidation of regulated entity. Our impression is that this should be sufficient to capture all entities that are part of financial conglomerates.

Question 11

Do you want to share any other relevant information with the Services regarding the supervision problems at the top level?

Answer

While we support the objective of ensuring the transparency of financial conglomerates, as already stated, we think the main supervision is best done at the sectoral level by the competent authorities.

If it should nevertheless be deemed necessary to enhance cross-sectoral supervision at the level of the financial conglomerates, we think that the following considerations should be taken into account: Banking and insurance activities have different risk profiles that either are uncorrelated or compensate each other naturally. PnC insurance risks are uncorrelated to market risks and, while life insurance risks are linked to an increase in interest rates, bank risks are linked to a decrease in interest rates. This natural hedging is reinforced by the complementarity of business cycles which are short in the case of banks and long in the case of insurances. All the more, integrating insurance and banking businesses allows increasing the efficiency of the risk management of the insurance by leveraging the deep knowledge that

the bank has of its consumers. As a result, for a bank to have a dedicated insurance subsidiary is a significant factor of risk diminution and rating improvement. We therefore think that any supervision of financial conglomerates at the consolidated level should reflect this risk diversification.