



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

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Joint Consultation Paper

Guidelines on the convergence of supervisory practices
relating to the consistency of supervisory coordination
arrangements for financial conglomerates

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1. Responding to this Consultation

The ESAs invite comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the ESAs should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page on ESAs' websites by 12 June 2014. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the ESAs' rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the ESAs' Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the ESAs is based on Regulation (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000 as implemented by the ESAs in their implementing rules adopted by their Management Board. Further information on data protection can be found under the Legal notice section of the EBA website and under the Legal notice section of the EIOPA website and under the Legal notice section of the ESMA website.

2. Executive summary

1. In accordance with Article 11 of Directive 2002/87/EC (the ‘Financial Conglomerates Directive’, ‘FICOD’) and the procedure set out in Article 56 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010 (together the ‘European Supervisory Authority (ESA) Regulations’), the ESAs, through the Joint Committee, shall develop guidelines to achieve convergence of supervisory practices relating to the consistency of supervisory coordination arrangements in accordance with Article 116 of Directive 2013/36/EU and Article 248(4) of Directive 2009/138/EC.
2. These guidelines aim to clarify and enhance cooperation between the competent authorities on a cross-border and cross-sectoral basis and to supplement the functioning of sectoral colleges (if any) where a cross-border group has been identified as a financial conglomerate. The purpose of the guidelines is also to enhance the level playing field in the financial market and reduce administrative burdens for firms and supervisory authorities.
3. The guidelines cover the activities where close cooperation between supervisors is needed to achieve the objectives of supplementary supervision. The guidelines cover the following areas:
 - a) mapping of the conglomerate structure and written agreements;
 - b) coordination of information exchange in going concern and emergency situations;
 - c) supervisory assessment of financial conglomerates;
 - d) supervisory planning and coordination of supervisory activities in going concern and emergency situations; and
 - e) other decision-making processes among the competent authorities.
4. The mapping process is to specify the regulated entities within a financial conglomerate, which, in accordance with the mandate of the FICOD, must be supervised on a supplementary basis, and more specifically to facilitate the tasks to be performed by the coordinator in accordance with Article 11(1) of the FICOD, by ensuring that the coordinator and the relevant competent authorities have a comprehensive understanding of the structure of the regulated entities that belong to each financial conglomerate. The mapping exercise is also used for the identification process described in Article 4 of the FICOD. The identification process will benefit from the mapping exercise in each annual update.
5. The guidelines provide practical guidance for the coordinator and the competent authorities about how to provide each other with information. As indicated in Article 11 of the FICOD, the task to be carried out by the coordinator relating to supplementary supervision must include coordinating the gathering and dissemination of relevant or essential information in

going concern and emergency situations, including the dissemination of information which is of importance for a competent authority's supervisory task under sectoral rules.

6. The part of the guidelines covering the process of supervisory assessment of financial conglomerates set out the procedural arrangements for cooperation between the coordinator and the (relevant) competent authorities to fulfil the supervisory assessment of the financial conglomerate with a focus on the following areas: capital adequacy, intra-group transactions, risk concentration, internal control mechanisms and risk management processes. The arrangements referred to in Title IV – Supervisory assessment of financial conglomerates, should allow the coordinator to perform the following tasks:
 - a) overview and assess the financial situation of a financial conglomerate;
 - b) assess compliance of the financial conglomerate with the rules on capital adequacy and of risk concentration and intra-group transactions (Articles 6, 7 and 8 of the FICOD);
 - c) assess the financial conglomerate's structure, organisation and internal control system (Article 9 of the FICOD).
7. The planning and coordination of supervisory activities for the supervision of a financial conglomerate should, as far as possible, be incorporated by the coordinator into the colleges' process that has already been established pursuant to Article 116 of Directive 2013/36/EU or Article 248(2) of Directive 2009/138/EC.
8. Finally, these guidelines provide guidance on the procedures that the coordinator and the other relevant competent authorities should follow when requested under the FICOD to put in place: (i) consultation processes; (ii) common agreements, (iii) annual reassessment (of waivers), and the coordination of enforcement measures.

3. Background and rationale

9. Financial conglomerates are subject to supervision in addition to that of a banking or insurance group. Supplementary supervision is necessary to address two main concerns: (1) avoiding the double gearing or multiple use of capital, whilst ensuring it is appropriately allocated in the group according to sectoral rules; and (2) monitoring group risks, which are those arising from the group structure of a financial conglomerate, i.e. risks of contagion, structure complexity, risk of concentration, and conflicts of interest.

10. The coordination arrangements devoted to any conglomerate should:

- a) ensure there is adequacy of capital at the level of the financial conglomerate, in particular, that regulatory capital (i) is available across legal entities; and (ii) is at least equal to the supplementary capital adequacy requirements calculated pursuant to Annex I of the FICOD;
- b) monitor risk concentration at the level of the financial conglomerate as well as the significant intra-group transactions between the regulated entities;
- c) ensure that the financial conglomerate has adequate risk management processes and internal control mechanisms in place.

11. Where colleges are already in place for the monitoring of a banking group and/or an insurance group that is part of a financial conglomerate, a specific item can be added to the agenda of the sectoral college that has already been established or other procedural arrangements can be agreed on in order to perform the supplementary supervision tasks.

4. Draft Joint Committee Guidelines on the convergence of supervisory practices relating to the consistency of supervisory coordination arrangements for financial conglomerates

Status of these guidelines

12. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010 (together the ‘European Supervisory Authority (ESA) Regulations’)¹. In accordance with Article 16(3) of the ESA Regulations, competent authorities, financial institutions and financial market participants must make every effort to comply with the guidelines.
13. The guidelines set out the ESAs’ view of appropriate supervisory practices within the European System of Financial Supervision or how Union law should be applied in a particular area. The ESAs therefore expect competent authorities to comply with the guidelines. Competent authorities to whom guidelines apply should comply by incorporating them into their supervisory practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including cases where guidelines are directed primarily at institutions or at financial market participants.

Reporting requirements

14. According to Article 16(3) of the ESA Regulations, competent authorities must notify the ESAs as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by **dd mm 2014**. In the absence of any notification by this deadline, competent authorities will be considered by the ESAs to be non-compliant. Notifications should be sent by submitting the form provided at Section 5 either to **XXX@eba.europa.eu**, **XXX@esma.europa.eu** or **XXX@eiopa.europa.eu** with the reference

¹ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC; Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC; and Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

'JC/CP/2014/02'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities.

15. Notifications will be published on the Joint Committee section of the ESAs' websites, in line with Article 16(3) of the ESAs Regulations.

Title I – Subject matter and scope

1. These guidelines fulfil the requirement set out in Article 11(1) of Directive 2002/87/EC² (FICOD) for the ESAs, through the Joint Committee, to develop guidelines to achieve convergence of supervisory practices relating to the consistency of supervisory coordination arrangements in accordance with Article 116 of Directive 2013/36/EU and Article 248(4) of Directive 2009/138/EC.
2. The guidelines aim to clarify and enhance cooperation between competent authorities on a cross-border and cross-sectoral basis and to supplement the functioning of sectoral colleges (if any) where a cross-border group has been identified as a financial conglomerate under Directive 2002/87/EC. These guidelines also aim at enhancing the level playing field in the internal market by ensuring that there is consistent supervisory coordination.
3. Article 11(1) of the FICOD sets out the tasks of the competent authority responsible for exercising supplementary supervision (the coordinator) and requires of the coordinator, the other relevant competent authorities and, where necessary, the other competent authorities concerned, to have coordination arrangements in place. Article 11(4) of the FICOD requires the fulfilment of the cooperation and the tasks of the coordinator under Article 11(1)-(3) of the FICOD, and the cooperation and exchange of information between competent authorities under Article 12 of the FICOD and the appropriate coordination and cooperation with relevant third-country supervisory authorities to be fulfilled through colleges, established pursuant to Article 116 of Directive 2013/36/EU³ or Article 248(2) of Directive 2009/138/EC⁴. The guidelines focus on these requirements.
4. The guidelines are addressed to competent authorities as defined in Article 2(16) of the FICOD.
5. Unless otherwise stated, references in these guidelines concern the relevant provision of the FICOD.

Title II – Mapping procedure, cooperation structure and coordination arrangements

6. Mapping is a process of collecting and analysing the information needed to identify those entities constituting a financial conglomerate in accordance with Article 3 of the FICOD, and over which competent authorities are required to exercise supplementary supervision through the supervisory coordination arrangements under Article 11(1) of the FICOD.

² Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (OJ L 35, 11.2.2003, p. 1).

³ Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006, relating to the taking up and pursuit of the business of credit institutions (OJ L177, 30.6.2006 p. 1).

⁴ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L176, 27.6.2013 p. 338).

Mapping process

7. The coordinator should carry out a mapping process in cooperation with the other competent authorities which have authorised regulated entities that are part of the financial conglomerate. Those competent authorities should use the outcome of the mapping process to determine the appropriate extent of supplementary supervision based on the organisation, scale and complexity of the financial conglomerate.
8. The mapping process should be performed taking due consideration of the identification process described in Article 4 of the FICOD. Similarly, the outcome of the mapping process should be used in annual updates of the financial conglomerate identification process.
9. The mapping process involves collecting and analysing information needed to identify the competent authorities that, in accordance with Article 11(1) of the FICOD, need to have coordination arrangements in place.
10. The mapping process assumes the following:
 - a) a financial conglomerate has been already identified in accordance with Article 4 of the FICOD and through cooperation of competent authorities;
 - b) there is a sectoral college established pursuant to Article 116 of Directive 2013/36/EU or Article 248(2) of Directive 2009/138/EC; and the coordinator has been appointed in accordance with Article 10 of the FICOD.
11. These guidelines should also be applied, with any necessary adjustments, where these conditions are not fulfilled.
12. The mapping process should:
 - a) take into account the outcome of the mapping processes carried out at the sectoral level;
 - b) focus on the cross-sectoral linkages, such as close links and participations, between the regulated entities in a financial conglomerate;
 - c) be coordinated by the coordinator.
13. The coordinator should engage in dialogue with the financial conglomerate and the relevant competent authorities and then prepare an initial mapping and circulate it to all the relevant competent authorities for their input.
14. The mapping should be updated regularly, at least annually, taking into account changes in the financial conglomerate's structure. Any updates to the initial mapping should be circulated to all the relevant competent authorities.

15. The mapping should take into account all the regulated entities within the group, and it should indicate under which of the following categories each regulated entity falls:

- a) insurance undertakings and reinsurance undertakings; or
- b) credit institutions and investment firms.

16. The mapping should identify:

- a) all EEA subsidiaries;
- b) EEA branches that are either significant for the local market or important for the sectoral group, according to the definition of such branches provided for in the respective sectoral directives;
- c) non-EEA subsidiaries and branches relevant for the sectoral group; and
- d) the participations held by the parent undertaking or any of its subsidiaries, within the meaning of Article 2(11) of the FICOD and given the definition of group under Article 2(12) of the FICOD.

17. The coordinator should set out the mapping using the template in Annex 1.

Cooperation structure

18. The coordinator should decide, based on the results of the mapping exercise, whether, in order to fulfil its tasks and to achieve the necessary degree of cooperation between competent authorities, it is necessary to add a specific item to the agenda of any sectoral college established pursuant to Article 116 of Directive 2013/36/EU or Article 248(2) of Directive 2009/138/EC, or to establish other procedural arrangements such as separate meetings dedicated to the supplementary supervision of financial conglomerates, or other forms of regular communication between the relevant competent authorities.

19. The number of participants in meetings or activities related to supplementary supervision should be adequate for the objectives pursued. The coordinator should ensure that the other competent authorities are fully informed about the activities and the outcomes of the sectoral college in a timely manner.

Additions to written coordination arrangements between the coordinator and the competent authorities

20. Written coordination arrangements established for sectoral supervision should be complemented with any additions needed to facilitate the effective supplementary supervision of a financial conglomerate. These additions should include the scope and frequency of

information exchange and refer to paragraphs 24 and 25 in relation to coordination and information exchange in going concern and emergency situations and paragraph 32 as regards the assessment of the financial situation of a conglomerate.

21. The additions should be tailored to reflect the nature, size and complexity of the financial conglomerate. The additions to written arrangements should include:
- a) the procedures to follow in emergency situations, where a higher frequency of contacts and a faster response should be established; and
 - b) the procedures for conglomerates with the parent undertaking in a third country, subject to confidentiality requirements and Union law

Coordination arrangements with the supervisory authorities of third countries

22. Where a financial conglomerate has significant entities in third countries, the coordinator should involve the competent authorities of third countries in the cooperation arrangements for a financial conglomerate, subject to Article 18 of the FICOD and sectoral rules on the equivalent supervisory approach and comparable confidentiality arrangements.

Title III – Coordination of information exchange in going concern and emergency situations

Scope and frequency

23. The scope of information exchange between the coordinator and the other competent authorities should include all relevant or essential information needed for the tasks referred to in Article 11 of the FICOD. This may include information relevant for the stress testing of financial conglomerates as specified in Article 9(b) of the FICOD.
24. The exchange of information between the coordinator and the competent authorities should reflect the needs of the supervisors involved. While coordinating the information flows, the coordinator should take due account of the nature of the supervised entities in the financial conglomerate, their relevance within the conglomerate and the significance of their local markets.
25. Competent authorities are to make every effort to exchange information as soon as practicable. The coordinator should agree with the other competent authorities on the frequency, formats and templates for the regular exchange of information. Templates should be agreed on between coordinator and the competent authorities, in particular for the gathering of information on risk concentration and intra-group transactions.

26. If a competent authority receives a request for relevant information from another competent authority, it should provide the information without undue delay. Any other essential information that may affect the financial position of either the conglomerate as a whole or of any of its individual undertakings should be communicated to the coordinator or to the competent authority concerned as soon as practicable.

Collecting information

27. Competent authorities should gather the information from the entities under their supervision and provide it to the coordinator and to the other competent authorities, unless specific arrangements have been made for another competent authority to gather the information concerned from those entities.

Communication channels

28. Competent authorities and the coordinator should consider the use of the full range of communication channels (including college meetings, official letters, emails, phone/video calls/conferences, and website platforms) and should agree which communication channels should be used for gathering and disseminating information regarding the financial conglomerate. All confidential and sensitive information should be shared via a secured communication channel. In particular, competent authorities should make use of secure web-based communication platforms where available.

Communication with the financial conglomerate

29. The coordinator should be responsible for communication with the parent undertaking at the head of the group or, in the absence of a parent undertaking, with the regulated entity with the largest balance sheet total in the largest financial sector in the group. Competent authorities should inform the coordinator before communicating directly with that parent undertaking or regulated entity. Should exceptional circumstances not permit prior notice, competent authorities should inform the coordinator without undue delay of the nature and outcome of the communication.

Communication in times of crisis

30. A competent authority that identifies an emergency or crisis situation affecting regulated entities in a financial conglomerate should alert the coordinator and the other competent authorities whose supervised entities might be affected by that situation. Competent authorities should cooperate closely, whenever necessary, in the crisis management process and actively exchange relevant information. The coordinator should ensure that, where appropriate, the ESAs are informed of any relevant developments in accordance with Article 18(1) of the ESA Regulations.

Title IV – Supervisory assessment of financial conglomerates

Assessment of a financial conglomerate's financial situation

31. The coordinator should engage in dialogue with the relevant competent authorities in order to perform the task of supervisory overview and assessment of the financial situation of the financial conglomerate. Considering the group's structure, as agreed during the mapping exercise, the coordinator should assess the overall risk profile of the financial conglomerate.
32. The coordinator should ensure that the dialogue identifies:
- the main vulnerabilities and deficiencies of the financial conglomerate's entities giving particular attention to their cross-sectoral links; and
 - risk management and control issues in relation to compliance with capital requirements, risk concentrations and intra-group transactions.

Assessment of capital adequacy

33. The coordinator and the other competent authorities should review the policies on capital planning of regulated entities in a financial conglomerate. The review should be carried out on a group-wide, sectoral and individual entity basis and should build on, but not duplicate, similar analyses carried out at sectoral level.
34. In particular, and in addition to the annual calculation of capital requirements pursuant to Article 6 of the FICOD, the relevant competent authorities should provide the coordinator with their sectoral assessment of capital adequacy as part of the regular exchange of information. If available, the assessment should include: (a) an evaluation of the quality of each entity's capital, considering potential material restrictions on its transferability; and (b) regulatory constraints that may arise at solo/subconsolidated level.
35. The coordinator is responsible for the assessment of the conglomerate's capital adequacy policies. In order to prepare the assessment, the coordinator should take into account the assessments provided by the relevant competent authorities. In particular, the coordinator should assess the impact of the capital adequacy of each conglomerate's entity (be it a single entity or a subgroup) on the overall capital adequacy at the level of the financial conglomerate.
36. With respect to capital adequacy calculations, the coordinator should consult competent authorities on the exclusion of an entity from the calculation; see paragraph 56 point (a) of these guidelines.

Assessment of risk concentration

37. In order to perform supplementary supervision of the risk concentration of regulated entities in a financial conglomerate, the coordinator should coordinate with the relevant competent authorities in order to monitor how risk concentrations may create potential contagion effects within the financial conglomerate, conflicts of interests and circumvention of sectoral rules.
38. Taking into account the structure of the financial conglomerate, the coordinator and (relevant) competent authorities should agree whether in order to effectively assess risk concentration, it is necessary to request information from regulated entities within the financial conglomerate to supplement the information already available through reporting requirements.
39. Information exchanged between the coordinator and the competent authorities may include, if available, the following:
- how the (regulated entities) within the financial conglomerate manage risk exposures which interact across different risk categories;
 - analysis and assessment by competent authorities of internal reporting and limits systems of sub-groups or of individual entities in the financial conglomerate;
 - risk concentrations at cross-sectoral level, other than risk concentrations already being assessed at cross-border level within each sector.
40. The coordinator and the other competent authorities should inform each other about any supervisory action or measures taken towards the entities within the financial conglomerate in relation to risk concentrations. The coordinator should stand ready to facilitate the identification of joint supervisory measures on the subject.

Assessment of intra-group transactions

41. In order to perform supplementary supervision of intra-group transactions of regulated entities in a financial conglomerate, the coordinator should, in cooperation with the relevant competent authorities, monitor how intra-group transactions may create potential contagion effects within the conglomerate, conflicts of interests and circumvention of sectoral rules.
42. The coordinator and the competent authorities should decide whether or not to request of regulated entities within the financial conglomerate further information in addition to the information already collected through existing reporting in different jurisdictions and sectors, taking into account the structure of the financial conglomerate.
43. The coordinator and the competent authorities should agree on:

- a) the types of intra-group transactions to be monitored, taking into account the structure of the financial conglomerate, as well as the definition of intra-group transaction under Article 2(18) of the FICOD; and
 - b) the reporting thresholds for intra-group transactions, based on regulatory capital and/or technical provisions.
44. The coordinator and the other competent authorities should inform each other about any supervisory action or measures taken towards the entities within the financial conglomerate in relation to intra-group transactions. The coordinator should stand ready to facilitate the identification of joint supervisory measures on the subject.

Assessment of internal control mechanisms and risk management processes

45. For the purpose of assessing risk management processes and internal control mechanisms, the coordinator should coordinate with the relevant competent authorities.
46. The competent authorities should provide the coordinator with relevant information regarding their assessment of the risk management processes and internal control mechanisms of regulated entities (whether at individual or subconsolidated level), material deficiencies identified, and the methodologies used in performing their assessments.
47. The coordinator should discuss the individual assessments and the overall assessment with involved competent authorities in order to:
- a) assess the suitability of sectoral risk management and control mechanisms for mitigating the conglomerate's material risks and identifying potential contagion channels; and
 - b) reach a consistent view among the authorities involved on the financial conglomerate's risk management and controls systems.

Title V - Supervisory planning and coordination of supervisory activities in going concern and emergency situations

Planning and coordination of supervisory activities

48. Following the analysis performed in accordance with Title IV, the coordinator should incorporate the planning and coordination of supervisory activities for the supervision of a financial conglomerate into the established college process in cooperation with the relevant competent authorities.
49. Where there are specific procedural arrangements described in paragraph 18, the coordinator should organise at least one physical meeting of the college per year.

50. Where there is no specific item added to the agenda of the sectoral college for supplementary supervision, the coordinator, as chair of a sectoral college, should at least once a year invite the chair of the other sectoral college, or the competent authorities, in case there is no sectoral college, to attend a meeting of the college chaired by the coordinator. The coordinator should include items relevant to supplementary supervision in the agenda of that meeting. Invited authorities from the other financial sectors should be allowed to propose additional points for the agenda of the college meeting.

Coordinated action plan

51. Where only one sectoral college is established, supervisory activities related to the supervision of financial conglomerates should be included in the coordinated action plan of that college. Items related to supplementary supervision should be separately marked with reference to the supervisory activities under the FICOD.
52. Where there is a specific item added to the agenda of the sectoral college for the supervision of a financial conglomerate, the coordinator, in consultation with the other relevant competent authorities, should decide whether to have a specific coordinated action plan for supplementary supervision activities. When the supervision of the financial conglomerate is part of a sectoral college, the coordinated action plan for the financial conglomerate should be a specific part of the college coordinated action plan.

Sharing and delegation of tasks

53. The coordinator should lead the discussion on whether and how — taking into account existing sectoral rules — tasks should be shared and delegated in order to perform the overview of the financial conglomerate's financial position and other tasks related to supplementary supervision. The discussion should take into account the manner in which supervised entities are organised and should be proportionate to the nature, scale and complexity of the financial conglomerate.

Emergency planning

54. Where emergency plans exist at sectoral level, they should be coordinated and made available to all competent authorities responsible for the supervision of a regulated entity in a financial conglomerate under the coordination of the coordinator. If an emergency plan exists only in relation to one sector, it should be made available to the competent authorities responsible for the other sectors, and the contact details of those competent authorities should be included in that emergency plan. The coordinator should be responsible for maintenance of the emergency plan at the financial conglomerate level.

Title VI- Other decision-making processes among competent authorities

Procedures to be used in consultation processes

55. The consultation processes referred to in this Title are the following:

- a) consultation carried out by the coordinator in accordance with the third subparagraph of Article 6(5) of the FICOD before taking the decision referred to in point (c) of this Article regarding non-inclusion of a particular entity in the scope of supplementary supervision when calculating the supplementary capital adequacy requirements, where the inclusion of the entity would be inappropriate or misleading with respect to the objectives of supplementary supervision;
- b) consultation required by Article 12(2) of the FICOD, carried out by competent authorities with each other before taking a decision of importance for the supervisory tasks of other competent authorities with regard to (i) changes in the shareholder, organisational or management structure of regulated entities in a financial conglomerate, which require the approval or authorisation of competent authorities; and (ii) major sanctions or exceptional measures taken by competent authorities;
- c) consultation required by Article 18(1) of the FICOD, carried out by the competent authority which would be the coordinator, if the criteria set out in Article 10(2) of the FICOD were to apply, with other relevant competent authorities when verifying whether regulated entities whose parent undertaking has its head office in a third country, are subject to supervision by that third country's competent authority. This is equivalent to what is provided for by the FICOD on the supplementary supervision of regulated entities referred to in Article 5(2) of the FICOD.

56. When performing consultations, competent authorities should follow the following steps:

- a) the competent authority carrying out the consultation should ensure that its contents include an explanation of the subject matter of the consultation, the decision proposed, an explanation of how the decision will be made, and the nature of the response that is expected from the competent authorities consulted;
- b) the minimum consultation period should be two weeks, which may be reduced when necessary in cases of urgency, unless it is specified otherwise in the coordination arrangements concluded in the sectoral college;
- c) where a competent authority, which has been consulted, does not provide a response within the consultation period, the competent authority carrying out the consultation may consider that that competent authority has no objections to the decision proposed.

Procedures to be used in agreement processes

57. The agreement processes referred to in this Title are the following:

- a) the agreement to be reached in accordance with Article 3(6) of the FICOD by the coordinator with the relevant competent authorities regarding a decision that the lower ratios or the lower amount referred to in that Article shall cease to apply;
- b) the common agreement to be reached in accordance with Article 5(4) of the FICOD by the relevant competent authorities to determine whether and to what extent supplementary supervision of the regulated entities is to be carried out, as if they constitute a financial conglomerate, where persons hold participations or capital ties in one or more regulated entities or exercise significant influence over such entities without holding participation or capital ties.
- c) The agreement to be reached in accordance with Article 18(3) of the FICOD by the coordinator, after consulting with the other relevant competent authorities, on the application of other methods that ensure there is appropriate supplementary supervision of the regulated entities in a financial conglomerate whose parent undertaking has its head office in a third country and are not subject to equivalent supervision under Directive 2002/87/EC.

58. When reaching an agreement, competent authorities should follow the following steps:

- a) Prior to the agreement, the coordinator should lead a discussion between the relevant competent authorities by organising one or more meetings, whether physical meetings or teleconferences.
- b) Once the agreement is reached, it should be reflected in a written document containing enough reasoning to support the agreement. The document should be signed on behalf of the coordinator and the other relevant competent authorities. In the event of disagreement, the coordinator should, at the request of any of the other competent authorities concerned or on its own initiative, consult the relevant ESAs. Where an ESA is consulted, all the competent authorities should consider its advice in reaching the agreement. Where one or more competent authorities refuse to reach an agreement, the other competent authorities may, nevertheless, reach an agreement between themselves and the coordinator should notify the relevant ESAs of the failure to reach full agreement.
- c) The coordinator may invite non-EEA supervisors to be part of the written agreement, where appropriate, subject to confidentiality requirements that are equivalent to those established in Title VII, Chapter 1, Section 2 of Directive 2013/36/EU.

Procedures to be used in the annual reassessment of waivers

59. When carrying out the annual reassessment of waivers applied for the implementation of supplementary supervision, and a review of the quantitative indicators set out in Article 3 of the FICOD and of the risk-based assessments applied to financial groups in accordance with Article 3(9) of the FICOD, competent authorities should take the following steps:

- a) each year, the coordinator and the other relevant competent authorities should perform the reassessment and review in accordance with a supervisory plan agreed sufficiently in advance;
- b) the reassessment and process should be led by the coordinator, who should organise the necessary meetings to fulfil the mandate;
- c) the coordinator should estimate the resources that will be needed and communicate them to the relevant competent authorities; the coordinator and the other relevant competent authorities should allocate resources in accordance with the coordinator's estimate;
- d) where the reassessment and review indicate that it is appropriate to make changes to the waivers, quantitative indicators or risk-based assessments, competent authorities should apply the process set out in paragraph 58 in order to reach an agreement on those changes.

Procedures to be used in the coordination of enforcement measures

60. To coordinate enforcement measures and supervisory actions to be taken under Article 16 of the FICOD to rectify the situation where (i) the regulated entities in a financial conglomerate do not comply with the supplementary requirements referred to in Articles 6 to 9 of the FICOD ; or (ii) the requirements are met but solvency may, nevertheless, be jeopardised; or (iii) the intra-group transactions or the risk concentrations are a threat to the regulated entities' financial position, competent authorities should take the following steps:

- a) the coordination process should be led by the coordinator, who should organise as many meetings as necessary to fulfil the mandate;
- b) the coordinator should estimate the resources that will be needed and inform the relevant competent authorities; the coordinator and the other relevant competent authorities should allocate sufficient resources in accordance with the coordinator's estimate.

61. When coordinating enforcement measures, the information exchange processes described in Title III should be applied.



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

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62. These guidelines apply as of **dd mm 2014.**

5. Accompanying documents

5.1 Draft cost-benefit analysis / impact assessment

Introduction

63. This section evaluates the impact of the draft guidelines developed by the Joint Committee of the ESAs in accordance with Article 11(1) of the FICOD, which are to achieve convergence of supervisory practices relating to the consistency of supervisory coordination arrangements in accordance with Article 116 of Directive 2013/36/EU and Article 248(4) of Directive 2009/138/EC.

Scope and nature of the issue

64. In the report accompanying the legislative proposal to amend the FICOD5, the Commission noted that cross-border cooperation and convergence of the supplementary supervision was important, and that the lack of convergence in the interpretations of coordination provisions by various supervisors could reduce the effectiveness of supplementary supervision and hamper the achievement of the FICOD's objectives.

65. The guidelines developed by the Joint Committee aim to clarify and enhance cooperation between the competent authorities on a cross-border and cross-sectoral basis, and to supplement the functioning of sectoral colleges (if any) where a cross-border group has been identified as a financial conglomerate. These guidelines help meet the objectives of the FICOD of enhancing the level playing field in the financial market, reducing administrative burdens for firms and supervisory authorities, and strengthening supervisory cooperation and convergence of supervisory practices.

Technical options considered

66. In order to comply with the mandate, the guidelines focus on procedural aspects, i.e. they seek to specify procedures to be followed by the coordinator and the competent authorities in order to achieve convergence of supervisory practices and consistency of supervisory arrangements. They are drafted in a concise, clear and pragmatic way to ensure that they are effectively used in practice.

67. The guidelines follow the guidance provided under recital 4 of the FICOD I (Directive 2011/89/EU), in accordance with which the colleges of financial conglomerates should not duplicate or replicate the activities of existing colleges, but should rather provide a framework for supplementary and comprehensive cooperation and coordination between the

⁵ http://ec.europa.eu/internal_market/financial-conglomerates/docs/com-2010-433_impact_assessment_en.pdf

entities of the financial conglomerates. They also follow the guidance given in Article 11(4) of the FICOD, in accordance with which the coordination arrangements referred to in the second subparagraph of paragraph 1 shall be separately reflected in the written coordination arrangements in place pursuant to Article 131 of Directive 2006/48/EC (currently Article 116 of Directive 2013/36/EU) or Article 131 of Directive 2006/48/EC (currently Article 248 of Directive 2009/138/EC). The coordinator, as Chair of a college established pursuant to Article 116 of Directive 2013/36/EU or Article 248(2) of Directive 2009/138/EC, shall decide which other competent authorities participate in a meeting or in any activity of that college’.

68. The guidelines cover the following five areas, where they are deemed to add value by enhancing convergence of supervisory practices:

- a) mapping procedure, cooperation structure and coordination agreements;
- b) coordination of information exchange in going concern and emergency situations;
- c) supervisory assessment of financial conglomerates;
- d) supervisory planning and coordination of supervisory activities in going concern and emergency situations;
- e) other decision-making processes among the competent authorities.

69. To ensure there is maximum transparency and consistency of supervisory practices, the guidelines cover procedures relating to all the tasks that the coordinator carries out with regard to supplementary supervision, in coordination with competent authorities, which are specified in Article 11(1) (a)-(f) of the FICOD.

70. This impact assessment considered the following policy options as being those most relevant for the guidelines, under each of the following five areas:

Mapping of the conglomerate structure and written agreements

71. The policy option selected was to specify the procedures to follow for the mapping exercise, as well as procedures for communication between the coordinator and the competent authorities. The guidelines also suggest where the results of the mapping exercise could be used.

72. The procedures to follow as part of the mapping exercise cover not only procedures under Article 3 of the FICOD (Thresholds for identifying a financial conglomerate) and Article 5 (Scope of supplementary supervision of regulated entities referred to in Article 1), but also procedures for identifying financial conglomerates (Article 4 of the FICOD). In this context, the results of the mapping exercise should provide a valuable input for the list of financial conglomerates, which is being compiled and updated by the Joint Committee on an annual basis.

73. Beyond providing input to the annual update of the list of financial conglomerates, the guidelines suggest that the results of the mapping exercise can be reflected in the cooperation structure of the conglomerate, in additions to existing written arrangements, as well as in the coordination arrangements with the supervisory authorities of third countries.
74. The policy option chosen is to ensure there is consistency in executing the mapping of the structure of the financial conglomerate, facilitating the tasks to be carried out by the coordinator under Article 11 of the FICOD, and enhancing the level of convergence of supervisory practices in the mapping process.

Coordination of information exchange in going concern and emergency situations

75. The policy option selected was to specify the procedures to follow and provide practical guidance for the coordinator and the competent authorities in all the processes of exchange of information as envisaged by the FICOD. The scope of information exchange between the coordinator and the competent authorities has been interpreted in a broad sense, that is, it includes all essential and relevant information needed for the tasks referred to in Article 11 of the FICOD, and may also include information relevant to the stress testing of financial conglomerate as specified in Article 9(b) of the FICOD. The procedures specified cover the scope and frequency of the information exchange, the information collection process, the communication channels used, communication with the financial conglomerate, and communication in times of crisis. The policy option selected is considered most suitable for the purpose of ensuring maximum convergence in supervisory practices in the area of information exchange.

Supervisory assessment of financial conglomerates

76. The policy option selected was to specify the procedures to be followed by the coordinator and the competent authorities when performing various types of assessments of financial conglomerates covered by the FICOD. Such assessments include: assessment of the financial situation of the conglomerate, assessment of capital adequacy, assessment of risk concentration, assessment of intra-group transactions, and assessment of internal control mechanisms and risk management processes. To ensure there is an appropriate balance between convergence and flexibility in the performance of supervisory practices, all the procedures specified have some common features, while also reflecting the particular features of each type of assessment.

Supervisory planning and coordination of supervisory activities in going concern and emergency situations

77. The policy option selected was to specify the procedures to be followed by the coordinator and the competent authorities in specific selected areas which could benefit from enhanced

consistency and convergence of supervisory practices. The procedures are specified in the following areas: activities of college, reflection of supervisory activities in the coordinated action plan, sharing and delegation of tasks, and planning in emergency situations. As regards the coordinated action plan, it is suggested that the relationship of supervisory activities to the supervision of financial conglomerates should be marked separately in college coordination action plans that already exist, to ensure that there is consistency and to avoid duplication of activities of sectoral colleges.

Other decision-making processes among competent authorities

78. The policy option selected was to specify the procedures to be followed for all other decision-making processes between the coordinator and other relevant competent authorities that are mandated in the FICOD, as specified in Article 11(1)(f) of the FICOD, to ensure that there is maximum consistency.

79. Following identification of all such processes in the Directive, they have been grouped under the following main categories: consultation processes of the coordinator with the other relevant competent authorities, common agreement processes between the coordinator and the other relevant competent authorities; procedures in the annual reassessment of waivers and the coordination of enforcement measures.

Benefits

80. These guidelines will enhance supervisory cooperation and convergence and consistency of supervisory practices. The additional clarity about the procedures to be followed by the coordinator and the relevant competent authorities will help make supplementary supervision of large and complex groups in the EU more effective.

Costs

81. **Costs for the national supervisory authorities** – The main direct cost for supervisory authorities will relate to establishing processes for compliance with the proposals of these guidelines. Such costs for the competent authorities will be driven mainly by the need to adapt existing processes, or implement new processes for coordination, communication and information exchange with other competent authorities, and monitoring compliance with these guidelines. Further costs might include costs for training existing staff, hiring additional staff, if necessary, and related travel and reimbursement costs.

82. **Costs for institutions** – No significant costs for institutions are expected. There may however be costs related to setting up processes for the disclosure of necessary information and evidence to the competent authorities.

5.2 Overview of questions for consultation

1. Do you agree with the suggested scope of the guidelines with respect to the mandate given under Article 11 of the Directive 2002/87/EC (FICOD)?
2. Should the mapping process identify any other kind of undertakings and participations held by the parent undertaking or any of the subsidiaries of a financial conglomerate, apart from those described in paragraph 16?
3. Do you consider appropriate the minimum number of meetings described in paragraphs 49 and 50?
4. Do you agree with the analysis of the impact of the proposals in this CP? If not, can you provide any evidence or data that would further inform the analysis of the likely cost and benefit impacts of the proposals?