30th October 2009

Feedback to the public consultation on the Review of the Financial Conglomerates Directive

1. On 28th May 2009 the Committee of European Banking Supervisors (CEBS) and the Committee of European Insurance and Occupational Pensions (CEIOPS) - through the Joint Committee on Financial Conglomerates (JCFC) published their joint consultation on their proposed advice to the European Commission (EC) on its review of the Financial Conglomerates Directive (FCD). The consultation period lasted for three months and ended on the 28th August 2009. 9 responses were received, all of which were published on CEBS' and CEIOPS' respective websites. A public hearing was held on the 8th July 2009 at CEIOPS' office.
2. Taking the comments into account a revised version of the advice has been worked out.
3. The following is a summary of the main comments made in the public consultation presented in a feedback table (Annex 1) which includes CEBS'/CEIOPS' responses.

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General comment on the **whole** Review of FCD	BBA	The British Bankers' Association (BBA) understands the concerns and objectives of the Commission. We are supportive of the Commission's aims. The Committee has provided an in-depth analysis of the issues and proposed appropriate solutions, which are pragmatic and flexible. This is helpful as flexibility is key when it comes to regulating financial conglomerates in a risk-sensitive manner. In addition, we would like the Committee to maintain and promote structure-neutral solutions.	Noted.
	CEA	We welcome the opportunity to comment on the review of the Financial Conglomerates Directive (FCD). We agree with the Joint Committee on Financial Conglomerates (JCFC) that there are important technical issues that need to be resolved now and we are generally supportive of the	Noted. Discussion of consistency with Solvency II is considered in Chapter 2 paragraph 28.

[1] The ZKA is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks financial group, and the Verband deutscher Pfandbriefbanken (VdP), for Pfandbrief banks. Collectively, they represent more than 1,900 banks

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		solutions presented in the consultation paper. At the same time, we would stress that many of the issues in the consultation paper are also being revised at sectoral levels. For the insurance sector, Solvency II Level 2 implementing measures will address participations and intra-group transactions and risk concentration (see CEIOPS' Consultation Paper No.61 (CP 61)). It is very important that there is consistency between sectoral developments and the review of the FCD. In our view Solvency II offers a blueprint for financial services regulation. Any changes to the FCD now should not be inconsistent with Solvency II Framework Directive and Solvency II Level 2 implementing measures. We support having a full review of the FCD at a later stage and in our view this review should address any new sectoral developments and inconsistency between the FCD and sectoral directives, in particular Solvency II and its Level 2 implementing measures. However we are concerned about the different timelines for the technical review and full review of the FCD, and Solvency II and CRD. The interaction of implementing processes will be challenging for financial conglomerates and should not result in unstable financial conglomerate supervision (e.g. identification of financial conglomerates could differ from one year to another). We would also like to draw attention to the fact that Solvency II is a Lamfalussy style Directive whereas the FCD and CRD are not. This might	

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		create problems in the future. For example Solvency II allows for optional Level 2 implementing measures with regard to intra-group transactions and risk concentrations.	
	EACB	We appreciate the efforts of the JCFC to solve problems related to the practical application of the FCD. We think that the comment paper addresses the most relevant aspects. All in all, the solutions suggested seem to take the right direction, while we consider that regarding certain aspects differing approaches should be chosen.	Noted.
	EBF	1. The Consultation Paper which the Joint Committee on Financial Conglomerates (JCFC) has prepared is an outstanding document. The Committee has provided a thorough and in-depth analysis of the various difficult and complex issues which it had been invited to address and, moreover, has the merit of proposing appropriate solutions by adopting an approach which is both pragmatic and flexible. This is most helpful as flexibility is key to when it comes to fine-tuning the supervision of financial conglomerates in a risk-sensitive manner. 2. Whilst we fully understand that the Consultation paper did not go beyond the scope of the European Commission's call for advice, we	Noted.

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		would like to nevertheless stress the need to address, within a reasonable time-frame, any cross-sectoral differences which create distortions of competition across sectors, or which render the underlying conceptual framework of the sectoral Directives incoherent. This is particularly essential as cross-sectoral differences may influence the way in which financial conglomerates opt to structure themselves. The current regulatory environment puts banks which are to acquire 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 unless art. 59 can be used. This distortive effect contravenes the principle of organisational neutrality of regulation. Financial conglomerates are subject to supplementary supervision which provides supplementary safeguard as well as increased transparency. In these circumstances, it would be appropriate for the CRD to be amended so that Member States, in line with the present widespread but not uniform practice within the EU, would no	This issue is outside the scope of the Call for Advice. However, the work on these issues is already in place in other fora (i.e. The Joint Forum) and the EFCC request for a new in depth revision of the FCD and its interaction with the new sectoral directives.

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		longer be allowed to require from banks which are included in the supplementary supervision to deduct participations.	
	FBF	The FBF is pleased to take this opportunity to comment on the issues identified by the Joint Task Force on Financial Conglomerates and the proposed solutions to these issues. The paper provides a good analysis of the issues regarding the supervision of financial conglomerates. The JCFC is right to point out that the Financial Conglomerates Directive leaves some scope for interpretation as regards the precise set-up of such a framework. Overall, the FBF considers JCFC's considerations and suggested solutions helpful and expects that our response can contribute to improve the supervision of financial conglomerates with a view to reduce distortions of competition. Nevertheless we firmly believe that level three guidance is not always sufficient to avoid regulatory arbitrage and distortions of competition. Therefore, we suggest that the JCFC considers legislative changes that in our opinion may be the most efficient way to reach maximum convergence. You will find in the annex attached more comments on the questions raised by the JCFC in its consultation.	Noted, however, regulations do not provide for the flexibility which is required in some areas for the FCD.

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		The French Banking Federation wants to see the instigation of healthy competitive conditions and believes the only way to do so is to establish appropriate regulations. The FBF remains at your disposal for any further discussion on these matters.	
	GDV	The German Insurance Association (GDV) welcomes the opportunity to comment on the consultation paper of the Joint Committee on Financial Conglomerates (JCFC) "The review of the Financial Conglomerate Directive" (JCFC 09 10, 28 May 2009). Although we believe that the review of the Financial Conglomerate Directive (FCD) might somehow collide with the ongoing implementation process of Solvency II (Level I and II) and the next waves of CRD reviews, we basically agree with the issues identified by the JCFC that might be subject for improvement. These issues are considered as important enough to justify to go forward with the FCD review. We also appreciate the range of options presented by the JCFC which will contribute to better achieving the objectives of the FCD. However, from the view of the German insurance industry any envisaged legislative or guidance measure should be in strict accordance with Solvency II to the extent possible. The agreed Solvency II directive should be the guideline and the blueprint for the future of the supplementary supervision of Financial Conglomerates.	Noted. See response to CEA above.

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		Bearing this in mind, the review should – for instance - not rely only on the provisions of the IGD (Footnote 5 refers to the IGD "including Solvency II"). Given the fundamental changes in group supervision under Solvency II compared to the IGD the FCD should rather anticipate the Solvency II concepts and definitions in order to avoid contradictions and inefficiencies. We would stress that many of the issues in the consultation paper are also being revised at sectoral levels. For the insurance sector, Solvency II Level II implementing measures will address the definition and treatment of participations and intra-group transactions/risk concentrations (see CEIOPS' Consultation Paper No. 61 (CP 61)). It is very important that there is consistency between sectoral developments and the review of the FCD. Any changes to the FCD now should not be inconsistent with Solvency II Framework Directive and Solvency II Level 2 implementing measures. We support having a full review of the FCD at a later stage starting with a more fundamental debate in 2010 and in our view this review should address any new sectoral developments and inconsistencies between the FCD and sectoral directives, in particular Solvency II and its Level II implementing measures. It is evident that group supervision and capital related issues will have to be addressed. However we are concerned about the different timelines for the technical review and full review of	

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		the FCD, and Solvency II and CRD. The interaction of implementing processes will be challenging for financial conglomerates and should not result in unstable financial conglomerate supervision (e.g. identification of financial conglomerates could differ from one year to another). We would also like to draw attention to the fact that the Solvency II Directive is a Lamfalussy style directive whereas the FCD and CRD are not. This might create problems in the future. For example Solvency II allows for optional Level II implementing measures ("may") with regard to intra-group transactions and risk concentrations (Article 248 (4) and Article 249 (4))..	
	Länsförsäkringar	Länsförsäkringar AB Group is a Swedish financial conglomerate. Länsförsäkringar AB itself is a holding company owning a banking group, a non-life insurance group and a life insurance group. We want to draw attention to changes in the FCD that need to be prepared in parallell with Solvency II. In the draft Solvency II rules, diversification between risk types is explicitly allowed for in the Pillar I rules on capital requirements. We welcome this approach – it's how we ourselves view and report risks.	Noted. The issue on diversification is not addressed in the Consultation Paper as it is outside the scope of the Call for Advice.

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		We believe the capital requirements on financial conglomerates should allow for diversification between credit risks in bank lending on the one hand and insurance risks and market risks in insurance operations on the other hand. There is ample empirical evidence that these risks are not perfectly correlated: - Severe windstorms occur without noticeable effects on loan losses - Deep downturns on stock exchanges occur without major effects on loan losses - Severe loan loss cycles can pass without any serious effects on the outcome of non-life and life insurance risks We understand it's not without technical complications to introduce allowance for diversification in capital requirements on financial conglomerates. However, at least for holding company structures, where the risks of contagion are likely to be minimised, it could be done without coming in conflict with the sectoral rules on capital requirements, by using Solvency II pillar I-type rules on the financial conglomerate level. We believe that failure to recognise this issue would unfairly put our business model at a disadvantage, in practice requiring a higher protection (confidence) level in a financial conglomerate than in "single-sector" groups. For example, our Länsförsäkringar AB group would be at a comparative disadvantage if cross-sectoral intra-national diversification	

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		would not be recognised while cross-border diversification in insurance is.	
	ZKA	We welcome the intention of the JCFC to solve problems that arise from the use of the FCD. In our opinion, the identified problem areas have been accurately recognised. The proposed solutions are going in the right direction for the most part. We have commented in more detail on the individual items below.	Noted.
	Aviva	This consultation paper review highlights some important areas of uncertainty, inconsistency and anomaly in the current implementation of the Financial Conglomerates Directive (FCD). Aviva agrees that it is necessary to resolve these areas in the interests of ensuring a fair playing field and a consistent, proportionate and risk based approach to supervising conglomerates. As a general comment, Aviva agrees that is a number of areas the issues can be addressed relatively quickly and flexibly by issuing level 3 guidance to supplement the existing provisions of the FCD. However, as the paper recognises, given that this guidance would not be legally binding there is a risk that it will not force regulatory convergence in the same way as would legislative amendments to the FCD. Given that the rationale of having an additional prudential supervisory regime for conglomerates is that these can be among largest and most complex of financial groups, with risk concentrations which may not be adequately	Noted.

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		understood by sectoral supervision alone, it is very important to have a clear and consistently applied conglomerates regime. Aviva therefore strongly encourage CEIOPs to take an active stance in relation to developing this guidance and monitoring its use by supervisors. Aviva would also welcome more clarity on how it is proposed to supervise conglomerates in future under the proposals for the new European Supervisory Authority regime.	
Chapter 2	Definitions of different types of holding companies and their impact on the application of sectoral group supervision		
Q1 Do you agree with the above analysis?	BBA	Yes	Agreed.
	CEA	We agree with the analysis that the issue should be addressed. On the other hand we are not aware of any empirical evidence that insurance groups try to structure themselves for regulatory arbitrage purposes.	Agreed and noted.
	EACB	The illustration of the problems that can arise regarding the interaction between sectoral supervision and FCD supervision, in particular when an MFHC is involved seems comprehensible	Agreed.
	EBF	**EBF Answers to Q 1 & 2:**	Agreed.

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		The EBF fully subscribes to the analysis made by the JFCF as well as to the solution which it proposes.	
	FBF	Yes. We agree with the analysis provided by the JCFC.	Agreed.
	GDV	We agree with the conclusion that action is required to address this issue. On the other hand we are not aware of empirical evidence for groups that restructure themselves for supervisory arbitrage in this regard. Bearing this in mind, any solution should be proportionate and not impose supervisory burdens not justified by the relevance of the problem.	Agreed and noted.
	Länsförsäkringar	It's not clear to us if the proposal is that each mixed financial holding company should also either be a FHC or an IHC, or if it would be an option for supervisors to decide so; "allow a holding company to be a MFHC and a FHC/IHC at the same time." It's further not clear to us what the consequences would be if the top company would be regulated as a MFHC and a FHC/IHC at the same time. How could duplication of supervision be avoided? Could it be the case that rules on the same type of matter differ for the MFHC and the FHC/IHC, creating legal uncertainty? How would that be avoided – would the supervisor decide in advance on what rules would apply, for each conglomerate?	Noted and please see response to CEA Q2.

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		Finally, paragraph 41 reads: "Option 1 proposes to provide supervisors with the same supervisory powers over MFHC which were already in place for the holding company under the sectoral regimes before the identification of a group as financial conglomerate." This is not a sectoral-neutral rule. Since more than three years have passed since the introduction of the rules on financial conglomerates, the dominant sector may have changed from banking to insurance or vice versa. Two currently otherwise identical conglomerates could hence be regulated differently because their histories differ.	
	ZKA	The problems with regard to group supervision that result when the financial holding company (FHC) or the insurance holding company (IHC) at the top of the conglomerate becomes a mixed financial holding company (MFHC) are accurately described.	Agreed.
	Aviva	Yes	Agreed.
Q2 Do you agree to the proposed recommendations? (Yes / No) If No, please elaborate on your alternative proposal	BBA	We agree with the analysis made by the JFCF as well as to the solution which it proposes. Extension of consolidated supervision to MFHC under the sectoral rules appropriate to the largest sector is fine provided that this extension of consolidated supervision to include the MFHC is proportionate and does not result in, for example, banking being shoehorned to capture insurance. We would also argue that this solution should not increase the reporting burden	Noted.

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	CEA	Whilst we are supportive of addressing the problems mentioned in the consultation paper, we are concerned that the proposed solution may create additional issues. It might interfere with the sectoral definitions of FHC/IHC, especially in situations where the MFHC holds banking and insurance participation of an equal size. According to the definition of an IHC stated in Article 210 of the Solvency II directive, it is required that the holding of participations in insurance or reinsurance undertakings is the main business of the company. Therefore, a MFHC basically cannot qualify as a FHC/IHC if its sectoral participations are nearly balanced or not dominated by one sector. These companies might just qualify as a mixed-activity holding company which is not subject to a wide range of group supervisory tools. The JCFC proposal might also introduce a new layer of supervision in simple structures where group supervision has not been in place before (holding company with one subsidiary which is subject to sectoral solo supervision). Moreover, the proposal would - as admitted by the JCFC itself - lead to duplications and multiple supervisory procedures given the fact that one company is supervised as a MFHC and IHC/FHC at the same time. Realizing this we would advise the JCFC to avoid unnecessary duplications. We do recognise that the proposals of the JCFC with respect to holding companies will lead to some benefits for banking-led financial	Chapter 2, paragraphs 19 and 22-24 have been amended to make clear the supplementary nature of the FCD and the potential for duplication. We do not support this view that a MFHC can not qualify as an IHC/FHC. A MFHC could be an IHC (or a FHC) at the same time, since having a "main" activity (e.g. insurance) does not preclude having other activities (e.g. banking). Although a "dominant" banking or insurance group, it would not be sufficient to ignore the '"non-dominant" part by only applying sectoral directives/ supervision. Hence, supplementary supervision under the FCD is needed.

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		conglomerates and for insurance–led financial conglomerates with banking subgroups.	
	EACB	Option 1 seems to provide for appropriate solutions in most cases. However, in order to avoid any duplication, there should be the possibility that in some specific cases only one supervisor will be in charge of conglomerate supervision.	Discussions around the role of the "coordinator", the role of the consolidated supervisor and the role of the Group supervisor is out of the scope of the Call for Advice.
	FBF	Yes. We agree that option 1 enables to remove the shortcomings of the present legislation mentioned in the issues identified by the JCFC. Moreover in our opinion the banking legislation already provides supervisory powers to retain a broader definition of financial conglomerates.	We note comments in respect to current issues. However, we do not feel that banking legislation provides for a broader definition of financial conglomerate.
	GDV	Basically, we do have a certain preference for a legislative solution as it is presented in option 1. However, this proposal might interfere with the sectoral definitions of Financial Holding Company (FHC)/ Insurance Holding Company IHC especially in constellations where the Mixed Financial Holding Company (MFHC) holds banking and insurance participation at an equal size. According to the definition of an IHC stated in Art. 210 of the Solvency II directive it is required that the holding of participations in insurance or reinsurance undertakings is the main business of the company. Therefore, a MFHC basically cannot qualify as a FHC/IHC if its sectoral participations are nearly balanced or not	See response to CEA Q2.

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		dominated by one sector. These companies might just qualify as a mixed-activity holding company which is not subject to a wide range of group supervisory tools. The JCFC proposal might also introduce a new layer of supervision in simple structures where group supervision has not been in place before (holding company with one subsidiary which is subject to sectoral solo supervision). This would result in additional subgroup supervision and would create an obvious contradiction to the envisaged consolidated assessment of a group. Moreover, the proposal would - as admitted by the JCFC itself - lead to duplications and multiple supervisory procedures given the fact that one company as supervised as a MFHC and IHC/FHC at the same time. Realizing this we would advise the JCFC to avoid unnecessary duplications. Regarding the reporting requirements the MFHC should be required only to disclose facts which do not apply to IHC/FHC according to their sectoral rules. Therefore, it might be reasonable to impose special reporting requirements for MFHC in order to avoid ambiguities. We do recognise that the proposals of the JCFC with respect to holding companies will lead to some benefits for banking-led financial conglomerates (because of waivers in sectoral group supervision) and,	

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		hence, for insurance–led financial conglomerates with banking subgroups (in which these waivers could be applied, as well).	
	ZKA	Option 1 appears to lead to appropriate results in most cases. However, here as well there is a risk of avoidable double regulation. We therefore suggest designing Option 1 so that in special individual cases the relevant supervisor is authorised to have supervision carried out by one supervisor at the conglomerate level.	See response to EACB Q2.
	Aviva	Yes, we support option 1 which allows a holding company to be classified as both a mixed financial holding company and an insurance holding company/financial holding company and thus enables supervisors to retain the same supervisory powers as were in place before the group was identified as a conglomerate. This avoids the truly anomalous risk of the supervisory structure of a group being weakened by its classification as a conglomerate. The nature of the legal change proposed in option 1 seems the lowest impact method of achieving this.	Agreed.
Other comments on chapter 2	CEA	The proposed legislative change by the JCFC would imply changing also the Solvency II Directive (Article 210 (1) e) "insurance holding company" and f) "mixed-activity holding company").	Agree with comment referring to Solvency II. Art 210(1)(e). However, we do not think it is necessary to change the definition of "mixed activity holding company" as

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			this definition only applies to an insurance company in a limited number of cases (Insurance Groups Directive: Arts 5.2, 6 and 8, which are recast into Solvency 2: Arts 267 and 268) and does not overlap with the definition of an "insurance holding company" or a "Mixed financial holding company".
	GDV	It is still questionable for us why a mixed financial holding company should be subject to sectoral group supervision if it is covering two sectors and hence be subject to financial conglomerate supervision in order to make certain supervisory tools available to financial conglomerates. It would be a more reasonable approach to align the FCD based on the role model provided by Solvency II in order to remove inconsistencies. Remaining potential arbitrage in the identification process of financial conglomerates should be addressed by flexibility based on proportionality, i. e. taking into account the nature, scale and complexity inherent in the business of the group.	Agree with comment referring to Solvency II. Art 210(1)(e). However, we do not think it is necessary to change the definition of "mixed activity holding company" for reasons outlined in response to comment from CEA above.

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		The proposed legislative change by the JCFC would imply changing also the Solvency II Directive (Article 210 (1) e) "insurance holding company" and f) "mixed-activity holding company").	
Chapter 3	The definition of "financial sector" and the application of the threshold conditions in Article 3 of the FCD		
Part 1	Inclusion of entities for the purposes of identifying a financial conglomerate		
Q3 Do you agree with the above analysis?	BBA	yes	Agree.
	CEA	We agree that it would be helpful to have clarity on the inclusion of AMCs. Clearly there should be harmonisation between member states on this issue and therefore guidance or legislative revision is required. However, we would have welcomed in-depth analysis on the impact of including AMCs. Without this analysis it is difficult for us to give our views on this issue.	Agree. Noted.
	EACB	We share the conclusion that supervisory practices regarding the treatment of AMCs under the FCD are not homogenous. However, we would like to recall that some AMCs are financial institutions in the meaning of article 4 (5) of the CRD and thus included in the sectoral consolidation of credit institutions.	Agree Noted, but Asset Management Companies (AMC) are specifically

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			defined under Art 2(5) FCD.
	EBF	**EBF Answers to Q 3 & 4:** The EBF concurs with the view taken by the JCFC that the FCD would need to be changed so that they are included for the purpose of identification as a financial conglomerate. We may note though that at least most AMCs appear to be already captured due to their being included in the consolidation under the CRD.	Noted.
	FBF	Yes. In the banking sector, asset management companies are included in the scope of financial conglomerates and they are taken into account for the identification of a financial conglomerate.	Noted.
	GDV	We agree that it would be helpful to have clarity on the inclusion of Asset Management Companies (AMCs). Clearly there should be harmonisation between member states on this issue and therefore guidance or legislative revision is required. However, we would have welcomed in-depth analysis on the impact of including AMCs. Without this analysis it is difficult for us to give us our views on this issue.	Please see response to CEA.
	ZKA	Like the JCFC we see a divergence in the individual member states with regard to the question of whether asset management companies (AMCs)	Agree.

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		should be taken into account in the identification of a conglomerate or not. However, it must be noted that some AMCs are financial institutions as defined by Article 4, Paragraph 5 of the CRD and are therefore already included in the scope of consolidation of the banking group.	Please see response to EACB.
	Aviva	Yes, Aviva agrees that there is an unacceptable lack of clarity as to how asset management companies should be treated under the FCD	Agree.
Q4 Do you agree to the proposed recommendations? (Yes / No) If No, please elaborate on your alternative proposal	BBA	yes	Agree.
	CEA	We do not oppose the option chosen by the JCFC (legislative change to include AMCs). However this legislative change should take into account of a situation where an AMC is managing assets on behalf of related credit or insurance institutions ("outsourced" capital management). Supervisory authorities should distinguish between proprietary asset management and third party asset management (we assume that such a split could be done easily). Related asset management companies whose only or main activities are proprietary asset management, and whose	Agree. The role of the AMC in the group should be taken into account when assessing the FC (e.g. management of assets on behalf of other entities in the group).

Reference	Name Company	Respondent's comment/answer	CEBS/CEIOPS Response and where appropriate resolution
		third party asset management is only accounting for a minor part of the overall assets under management, should be excluded for the purpose of identifying a financial conglomerate. The balance sheet items relating to the proprietary business conducted by those asset management companies should not be considered in the calculation of the thresholds according to Article 3 (2) and (3) FCD, i.e. it should be deducted from the balance sheet total before determining whether activities in different financial sectors are significant. We are therefore supportive of legislative guidance to ensure that AMCs are treated in a harmonised way by the supervisors as long the specific situation outlined above is excluded from the identification of a financial conglomerate. It has to be kept in mind that in identifying a financial conglomerate the FCD allows for combining banking and securities activities which is not possible for insurance. See also our comments to Part 3.	With regard to risk borne in managing assets (on balance sheet or off balance sheet), we note that situations differ among sectors: for an insurance company who manages Pension Funds, the assets of the Pension Funds are on balance sheet of the insurance company where in reality they may be third party assets, while in Banking, treatment is different, as the assets are segregated and off balance sheet. Chapter 3, paragraph 56 has been amended to acknowledge proprietary versus non proprietary activities of AMCs, any guidance will take account of UCITS directive.

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	EACB	In order to achieve a level playing field and equal competition, we recommend regulatory changes (modification of legislation) in order to ensure that AMCs are included into the identification process.	Agree.
	FBF	We agree that option 2 of the table provided by the JCFC should apply. The treatment of asset management companies should be the same when an insurance company is at the head of financial conglomerate and asset management companies should be retained for the identification of a financial conglomerate.	Agree.
	GDV	We do not oppose the option chosen by the JCFC (legislative change to include AMCs). However this legislative change should take into account of a situation where an AMC is managing assets on behalf of related credit or insurance institutions ("outsourced" capital management). Supervisory authorities should distinguish between proprietary asset management and third party asset management (we assume that such a split could be done easily). Related asset management companies whose only or main activities are proprietary asset management, and whose third party asset management is only accounting for a minor part of the overall assets under management, should be excluded for the purpose of identifying a financial conglomerate. The balance sheet items relating to the proprietary business conducted by those asset management	Agree. Please see response to CEA.

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		companies should not be considered in the calculation of the thresholds according to Article 3 (2) and (3) FCD, i.e. it should be deducted from the balance sheet total before determining whether activities in different financial sectors are significant. We are therefore supportive of legislative guidance to ensure that AMCs are treated in a harmonised way by the supervisors as long the specific situation outlined above is excluded from the identification of a financial conglomerate. It has to be kept in mind that in identifying a financial conglomerate the FCD allows for combining banking and securities activities which is not possible for insurance. See also our comments to Part 3.	
	ZKA	For reasons of competitive equality and convergence, we welcome a legal regulation which would ensure that asset management companies are taken into account in the identification of a conglomerate.	Agree.
	Aviva	Given the need to ensure a consistent approach across the EU, Aviva supports option 2, ie the amendment of the FCD to explicitly ensure the inclusion of AMCs for the purposes of applying the tests and thresholds used to identify conglomerates. Aviva agrees that a guidance based approach would not achieve the same level of legal certainty eg the guidance would be at risk of conflicting with national laws	Agree.

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Reference	**Name Company**	**Respondent's comment/answer**	**CEBS/CEIOPS Response and where appropriate resolution**
Part 2	How to include AMCs in the identification process - Allocation of AMCs to a particular sector and criteria for using income structure and off-balance sheet activities to determine the significance of the various financial sectors of a group		
Q5 Do you agree with the above analysis?	BBA	yes	Agree.
	CEA	We agree that there is ambiguity in the FCD on how to include AMCs in the identification process and measures need to be taken to ensure harmonisation. See also our comments to Part 1.	See response to CEA in Q4.
	EACB	In fact the FCD does not make any indication on how AMCs should be allocated, be it to the insurance or the banking sector. However, article 4 (5) of the CRD provides (sectoral) rules that ensure clarification regarding some AMCs.	Chapter 3, paragraph 50 details that the FCD explicitly defines AMC for specific treatments.
	EBF	**EBF Answers to Q 5 to 8:** The EBF agrees with the analysis made as well as with the proposed solution consisting in providing extra guidance, <u>provided flexibility is not lost</u>	Agree and note comments in respect to flexibility.
	FBF	Yes. We agree on the analysis provided by the JCFC.	Agree.
	GDV	We agree that there is ambiguity in the FCD on how to include AMCs in the identification process and measures need to be taken to ensure	See response to CEA in Q4.

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		harmonisation. See also our comments to Part 1.	
	ZKA	The analysis is right to the extent to which the FCD actually does not contain any statements about how AMCs are allocated to different sectors. However, the CRD does contain corresponding regulations for certain AMCs (see 3).	See response to EACB Q5.
	Aviva	Yes	Agree.
Q6 Do you agree to the proposed recommendations? (Yes / No) If No, please elaborate on your alternative proposal	BBA	We agree with the view taken by the JCFC that the FCD would need to be changed so that AMCs are included for the purpose of identification as a financial conglomerate. We also agree with the proposed solution to including AMCs in the identification process, provided that flexibility is not lost. In addition, we support the proposed solutions to the threshold issue as these would provide for more flexibility. It's not clear how the inclusion of AMCs should be achieved. We look forward to the opportunity to comment on the Level 3 guidance as to how inclusion should be achieved.	Agree.
	CEA	See our comments to Part 1.	See response to CEA Q4.
	EACB	As indicated above, there are different types of AMCs. Their on-balance and off-balance positions should be considered in a differentiated manner,	See response to CEA Q4.

Reference	Name Company	Respondent's comment/answer	CEBS/CEIOPS Response and where appropriate resolution
		depending on their activities and for whom they hold and manage assets. Sectoral rules seem to be more suitable to address this matter. In so far we do not share the JCFC proposals. Instead, we suggest developing rules on the allocation of AMCs within the context of the relevant sectoral rules, as it is the case already for some AMCs (see above).	
	FBF	Yes. We agree that option 2 –providing extra guidance to supervisors to identify a financial conglomerate- should be retained. Supervisors must have some flexibility to identify a financial conglomerate.	Agree.
	GDV	Though we generally challenge the inclusion AMCs at all extra guidance on the interpretation of the terms "income structure" and off-balance activities" is welcomed in order to ensure a uniform application. See also our comments to Part 1.	We note the comments on extra guidance. See response to CEA Q4.
	ZKA	In our opinion, in contrast to the proposal made by JCFC, regulations for the details of an allocation of AMCs in different sectors should be drawn up as part of sectoral supervision, as is already partially accomplished (see Q 3). There are different types of AMCs. Depending on precisely which activities these carry out and which assets are held for whom, a differentiated approach should be taken to the treatment of balance-sheet and off-balance sheet items. In our opinion the sectoral regulations are better suited for this purpose.	See response to CEA Q4.

Reference	**Name Company**	**Respondent's comment/answer**	**CEBS/CEIOPS Response and where appropriate resolution**
	Aviva	Broadly Aviva agrees with the recommended approach of using guidance, as opposed to formal amendment of the FCD, to clarify when AMCs should be allocated to the insurance or banking sectors of a group for identification purposes, and when it would be appropriate to use alternative parameters, including income structure and off balance sheet activities, to assess the size of group for the purpose of identifying a conglomerate. The caveat is that the guidance results in a more consistent and risk based approach in practice. If, after a period, there is evidence that some supervisors are choosing not to pay due regard to the guidance and cross country convergence of practice is not therefore being achieved, the option of legislating should be revisited.	Agree. Noted.
Q7 Could you suggest what issues the guidance should address and provide evidence to support your suggestion?	CEA	See our comments to Part 1.	Please see earlier response provided to CEA Part 1.
	EACB	As indicated under Q 6, we would prefer sectoral regulation, focusing especially on how far on-balance and off-balance positions are to be allocated. In particular, it would have to be clarified that assets that are	Please see response to CEA Q4.

Reference	Name Company	Respondent's comment/answer	CEBS/CEIOPS Response and where appropriate resolution
		held for third parties are not to be allocated to a conglomerate.	
	GDV	See our comments to Part 1.	Please see earlier response provided to Part 1.
	ZKA	As already stated with regard to Q 6, regulation should be undertaken in the individual sectors. In particular, the amount of the allocation of balance sheet and off-balance-sheet items must be regulated. Thus, it would not be appropriate with regard to the risk if these items were allocated to the conglomerate for an AMC which also holds assets for third parties.	Please see response to CEA Q4.
Q8 Could you suggest what features could distinguish between an Asset Management Company (AMC) within a banking group and an AMC within an insurance group?	CEA	See our comments to Part 1. AMCs in insurance groups often manage the assets of the insurance groups themselves in the context of the insurance business model and therefore play a very different role to AMCs in banking groups.	Noted. Please see earlier response to CEA Part 1.
	EACB	An AMC, which holds assets for third parties, i.e. parties that are not part of the conglomerate, seems to be quite a typical financial institution as defined under article 4 (5) CRD. Thus, such AMCs should remain subject	Noted.

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		to banking supervision in the future; the current approach should be maintained. If, however, an AMC exclusively holds assets of entities that are part of the conglomerate, the AMC should be treated as part of that sector, for which it holds the bigger amount of assets.	
	GDV	See our comments to Part 1. AMCs in insurance groups often manage the assets of the insurance groups themselves in the context of the insurance business model and therefore play a very different role to AMCs in banking groups.	Noted. Please see earlier response to GDV Part 1.
	ZKA	If an AMC also holds assets for third parties, i.e. entities that do not belong to the conglomerate, this is regularly the activity of a financial institution as defined in Article 4, Paragraph 5 CRD. These AMCs should be allocated to the banking sector as before. If the AMC holds exclusively assets from members of the conglomerate, it should be allocated to the sector from which the highest amount of assets by value are held.	Please see response to CEA Q4.
Part 3	Should quantitative standard thresholds determine whether supplementary supervision applies to a group?		
Q9 Do you agree with the above analysis?	BBA	yes	Agree.
	CEA	We agree with the JCFC that the thresholds should be made more risk-based and that the current thresholds are not necessarily fulfilling the objectives of the FCD.	Agree.

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	EACB	We admit that the fix limit of 10% can result in very small groups being subject to FCD supervision („midget conglomerates").	Noted.
	EBF	**EBF Answers to Q 9 to 11:** The EBF fully agrees with the analysis made in the Consultation paper and supports the proposed solutions as these will provide for more flexibility. The proposal reflects EBF´s earlier suggestions.	Agree.
	FBF	Yes. We agree that any revision of the FCD should provide more flexibility with respect to smaller financial conglomerates and to address waiver eligibility for larger financial conglomerates	Agree.
	GDV	We subscribe to the conclusion that the current interaction between relative and absolute thresholds may lead to the identification of financial conglomerates that obviously don't have a risk profile justifying a supplementary supervision.	Agree.
	ZKA	We agree that the absolute threshold value can lead to "mini-conglomerates". Thus, it should be only an indicator, but not necessarily lead to classification as a financial conglomerate	Noted.

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	Aviva	Yes	Agree.
Q10 Do you agree to the proposed recommendations? (Yes / No) If No, please elaborate on your alternative proposal	BBA	yes	Agree.
	CEA	We support a combination of options 2 and 3. This is a risk-based approach and also addresses our previous concern on the absolute threshold being too low. The absolute threshold is that the balance sheet total of the smaller financial sector exceeds €6bn. This should be increased as proposed in option 3. In our view €10bn would be an appropriate absolute threshold and would reflect the growth of the market and inflation since the FCD regime was put into place in 2002. In addition, we would refer to the comments we made on Part 1 on asset management companies which are managing assets of related credit or insurance institutions. Level 3 guidance should clarify that intra-group financial services, such as proprietary asset management, should not be taken into account in the calculation of the quantitative threshold of Article 3(3). We would also propose that a new waiver possibility is	We do not see a need for further legislative prescription in this area. As waivers can be granted, it should not be necessary to reassess thresholds. Changes in threshold levels (especially in the absolute, i.e. €6bn) do not help in the context of proposing flexibility, and they increase the risk of supervision missing targets, i.e. increasing the number of complex groups which are not assessed for possible

Reference	Name Company	Respondent's comment/answer	CEBS/CEIOPS Response and where appropriate resolution
		included in the FCD to address the issue of AMCs whose main business is proprietary asset management. A new sub-paragraph could be added to Article 3(3) as follows: **"the balance sheet total of the smallest financial sector is attributable primarily to the provision of intra-group financial services, such as proprietary asset management for related group companies."**	identification as conglomerates. Chapter 3, paragraph 90 has been amended to note the work currently being undertaken to provide guidelines for identifying systemically important groups. This work favours the use of qualitative criteria over quantitative as being more risk based and likely to capture the risks. We do not support the view and proposal for a legislative change for an additional waiver with regard to AMC for the reasons already illustrated under the previous comments related to AMC and in the paper.

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	EACB	We also consider option 2 to be the best solution. In fact, it gives supervisors the opportunity to take a flexible approach and to act according to the situation of the market. We think that the fix threshold of 6 bn. Euro should be reconsidered as the amount is not indexed and has not been changed since the implementation of directive 2002/87/EC.	Agree. Noted, but based on our analysis such an increase in the threshold has limited impact on the number of groups being captured as Financial Conglomerates but instead allows conglomerates not to be identified as such anymore. We do not see that such a change would not result in a more proportionate application of the directive or address the risks that are posed by such group. Please also see response to CEA.
	FBF	We believe that a discretional approach to supplementary supervision can distort competition if operated within vague criteria and applied differently across countries. We support option 1 – No legislative change- but guidance in relation to the application of the waiver under Article 3(3) of the FCD. We are opposed to options 4 and 5.	Noted. We do not support option 1 for reasons detailed in the paper.

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		Option 2 recommended by the JCFC could be a second best solution but it requires strong guidelines to keep a level playing field and to prevent regulatory arbitrage if waiver of article 3(3) is applied as a level three decision instead of level two.	We agree with the FBF's third statement. We agree with the final statement and remain supportive of Option 2.
	GDV	We repeatedly argued for the possibility to exclude small groups with a low risk profile. Given this objective we support Option 2 if it is combined with an increase of the relative threshold from 6 bln. up to 10 bln. EUR. This adjustment would appropriately reflect the growth of the financial markets and the inflation since enactment of the FCD in 2002. The fact that the current Financial Conglomerates do not show a clear cut as regards the thresholds underlines we need for flexibility in respect of an even higher threshold. In addition, we would refer to the comments we made on Part 1 on asset management companies which are managing assets of related credit or insurance institutions. Level 3 guidance should clarify that intra-group	Please see response to CEA Q10.

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		financial services, such as proprietary asset management, should not be taken into account in the calculation of the quantitative threshold of Article 3(3). We would also propose that a new waiver possibility is included in the FCD to address the issue of AMCs whose main business is proprietary asset management.	
	ZKA	We also believe that Option 2 is the best of those described. In comparison to the other methods, the regulations remain unchanged for the most part and enable the supervisory authorities to adapt their decision to the respective conditions in the market.	Agree.
	Aviva	Yes Aviva supports option 2, which creates the opportunity to waive very small financial conglomerates and proposes level 3 guidance on eligibility criteria for waivers. Aviva agrees that the proposed treatment of very small conglomerates is more risk based, and that the waiver guidance should promote more consistency in approach. This is, however, subject to the same general caveat as our response to Q6, ie if the guidance is not consistently applied across member states, then the alternative legislative approach of option 3 should be considered.	Agree. Noted.
Q11 Could you suggest what issues the guidance should	ZKA	In our opinion, the problem is sufficiently solved by a statutory regulation in which the supervisors, upon request from the group concerned, cannot classify the group as a conglomerate in the future	We do not support this view for the reasons detailed in the paper. However, supervisory dialogue with

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address and provide evidence to support your suggestion?		when the threshold value is exceeded. We assume that the national supervisors will use the discretion granted to them correctly. More detailed guidelines for the use of this exception option are therefore not required.	the conglomerate is envisaged, before a decision is made. Option 4 details the shortfalls of this proposal, namely: • Legal uncertainty of application due to complete discretion in applying the waiver. • Risk of un-level playing field if application is not consistent across Member States. • Lack of convergence unless extensive, clear and well defined guidance is delivered to supervisors across Member States. • It could raise bureaucratic cost/time consumption as the decisional process on waiver application could involve a case-by case examination for virtually all financial conglomerates.

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	EACB	A legal provision, according to which supervisors could decide, on request of the group concerned, not to subject it to conglomerate supervision, although the fix limit has been exceeded, would provide for an adequate solution. We believe that supervisors will use such discretion in a responsible manner. Therefore, we do not think that guidelines on such exceptions are required at this stage.	Noted, however, we do not support this view on the basis of arguments set out in Option 4. See the response to ZKA Q11.
Other comments on chapter 3	BBA	With regard to the mechanics of the threshold calculations referred to in Option 2, supervisors should look at the anomalous results for insurers whose CRR and asset totals tend to go down in a downturn. This means that external market conditions can influence whether a group is identified as a financial conglomerate.	Noted.
Chapter 4	Implications of different treatments of participations for the identification and scope of supplementary supervision of financial conglomerates		
Q12 Do you agree with the above analysis?	BBA	yes	Agree.
	CEA	We agree that there are different interpretations of the terms "participations" and "durable link" and that this leads to the objectives of	Agree.

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		the FCD not being achieved.	
	EACB	The problems that result from differing interpretations of the term „durable link" are well described. However, we think that this question is far less relevant for the identification of a conglomerate, while it is of crucial importance for the question of whether those participations are to be deducted from own funds. In some member states supervisors have a very strict understanding of this provisions, so that even very minor participations in insurances are to be deducted from banks' own funds, simply for the reason that banks sell products of those insurance companies to their customers in the course of their business. The problem of the identification of a conglomerate due to minor participations is well explained. However, we think that the provision of data (chapter 5) is the more relevant aspect in this context.	Noted, however, the treatment of participations for capital adequacy is outside the scope of the Call for Advice. Noted.
	EBF	EBF Answers to Q 12: The EBF agrees with the analysis of the issue that needs to be addressed.	Agree.
	FBF	No. We do not agree with the analysis provided by the JCFC.	We do not support this view on the basis that the FCD has different

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		The "durable link" criterion should be removed from the FCD and the definitions should be aligned with accounting standards published by the IASB. The prudential supervisors should not elaborate or interpret their own rules to define the scope of consolidation and to identify financial conglomerates.	objectives to those of the IASB. Chapter 4, page 30-31 has been amended to provide clarification on the concept of "durable link" and "significant influence".
	GDV	We agree with the JCFC conclusion to that extent that the "durable-link" criterion is responsible for many irritations and inconsistencies in the identification and supervision of financial conglomerates. However, we don't believe that these problems just arise from a heterogeneous interpretation which might be solved through additional guidance. Inclusion and supervision of participations less than 20% due to a durable link is not appropriate und does not reflect the objectives of the FCD.	See response to FBF Q12.
	ZKA	The problems arising from the different interpretations of the term "durable link" have been correctly recognised. However, this question would not regularly play a role in the determination of a conglomerate. We do not know of any cases in which a conglomerate was created solely through a "durable link". However, the issue plays a major role in the items to be deducted from the own funds. For example, the regulation in Germany, in contrast to other member states, results in mini-participations of financial institutions in insurance companies being deducted from the own funds solely for the reason that the institutions	Please note the discussion of deduction of capital is outside the scope of the Call for Advice.

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		sell products of the insurance company to their customers as part of their business activity. The issue of the creation of a conglomerate through minority participations is also described correctly. However, in this regard the problems of data procurement and inclusion in the risk management system described in Section 5 are most likely more severe.	Noted.
	Aviva	Yes	Agree.
Q13 Do you agree to the proposed recommendations? (Yes / No) If No, please elaborate on your alternative proposal	BBA	yes	Agree.
	CEA	We believe that IFRS definitions would be a good starting point for definitions. We note that CEIOPS' view in Consultation Paper No. 60 (Assessment of Group Solvency) is not fully in line with IFRS concepts (e.g. significant and dominant influence). Alignment of the scope of the regulatory group with the accounting group definition is desirable. We agree that there is a need to address the problem of different	The FCD has different objectives to those of the IASB. We do not support this view on the basis of arguments set out in option

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		interpretations and applications of "durable link" but we are not certain that Level 3 guidance will solve the problem. A legislative change removing the "durable link" criterion from the FCD may also offer a solution. We agree with the proposed recommendation for Part 2 aspect a) and b). Supervisors should be able to exclude a participation in the smaller sector from the identification exercise if it is the sole trigger for such identification and if it is adequately captured under sectoral supervision. We agree with the proposed recommendation for Part 2 aspect c).	1A. See response to FBF Q12. We agree with CEA's third statement. We agree with the final statement.
	EACB	We doubt that guidelines might be an appropriate solution to overcome differing interpretations of the term "durable link". In fact, for the definition of participation Art. 2 (11) FCD refers back to the fourth company directive 78/660/EEC. Thus guidelines could only provide for a limited solution as far as the FCD is concerned. By conclusion, the (same) situation could be treated differently for accounting purposes and for the purposes of the FCD. Thus, guidelines could create even more problems. We would therefore prefer a solution by a specific regulation amending Art. 2 (11) FCD. As explained under Q12 we believe that the question of a „durable participation" for the identification of a conglomerate is not relevant. For that reason we suggest to delete the reference in Art. 2 (11) to directive	Please see response to CEA Q13.

Reference	Name Company	Respondent's comment/answer	CEBS/CEIOPS Response and where appropriate resolution
		78/660/EEC. We support the proposals regarding the treatment of minority participations.	
	EBF	EBF Answers to Q 13: - The EBF agrees that implementing the proposals made in the Consultation Paper would be an improvement compared to the current situation. - It is not convinced that those proposals would result in an optimal situation and, therefore, believes that it may instead be appropriate to take a fresh look at the issue. The definition of "participation" (Art 2 item 11) consists of two alternative elements: 20% ownership/voting rights and participation as defined in the 4th Company Law Directive as rights in capital which create a "durable link. We strongly believe that the latter element to due its reference to the notion of "durable link" has introduced substantial complexity without bringing much added value. Quite the opposite, we feel that the quantitative trigger (20%) is simple in application but yet sufficiently broad to achieve the Directive's objectives. Therefore, we suggest support for initiatives to change the respective definition in the Directive, accordingly.	Agree. See comments to CEA Q13.

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Reference	**Name Company**	**Respondent's comment/answer**	**CEBS/CEIOPS Response and where appropriate resolution**
	FBF	No. We oppose the recommendation of the JCFC for Part 1 (§123) and we demand the alignment of the FCD rules with the accounting rules. There must be a legislative change to modify the FCD. For Part 2 aspects a and b: We agree that there should be some flexibility for supervisors not to treat a group as a financial conglomerate. We believe that guidelines, how strong they may be, cannot provide a consistent implementation by supervisors and prevent distortions of competition. In our opinion, the best way to do it could be a legislative change. So we do not agree with the JCFC advice on the option chosen for Part 2 aspect a) and b). For Part 2 aspect c: We agree on the recommended option proposed by JCFC.	We do not support this view given by FBF in first two statements. See comments to CEA Q13. Agree.
	GDV	Therefore, we strongly plead for a legislative solution in the sense of option 2. This adjustment should both remove the "durable-link" criterion and introduce a definition of participations similar to Art. 13(16) of the Solvency II directive. Independent from the identification issue the practical experience particularly proved that the enforcement of the FCD requirements with regard to participations less than 20% is hardly possible due to company law restrictions. The 20%-threshold would provide a great deal of clarity and consistency with group supervision based on Solvency II requirements.	We recognise restrictions may be imposed by Company Law, in relation to information that may not be provided to a minority if it is not provided to a majority. However, it is important for a supervisor to know the risks, even if not able to provide information from a Company Law perspective.

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		We believe that IFRS definitions would be a good starting point for definitions. We note that CEIOPS' view in CP 60 is not fully in line with IFRS concepts (e.g. significant and dominant influence). Alignment of the scope of the regulatory group with the accounting group definition is highly desirable. Such an alignment with accounting is crucial to reflect the internal control and management of groups.	We do not support this view; Chapter 4, pages 30-31 have been amended to clarify the concepts of durable link and significant influence.
	ZKA	In our opinion, regulation via guidelines on the issue of "durable link" is not useful. The definition of participations in Article 2, Paragraph 11 FCD refers to the definition of the accounting directive 78/660/EEC. Guidelines could only establish the interpretation of this directive for the purposes of the FCD. This would result in the same fact being interpreted in two different ways in the accounting directive, namely once for accounting purposes and once for the purposes of conglomerate supervision. In practice, this would lead to further problems. We therefore believe that a statutory regulation with which Article 2, Paragraph 11 FCD is changed accordingly is preferable. As already stated for Q 12, the question of a "durable link" has no practical relevance in the determination of the existence of a conglomerate. For this reason, we suggest that the reference in Article 2, Paragraph 11 FCD as well as in the directive 78/660/EEC be deleted without replacement.	We do not support this view. See response to GDV.

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		We support the proposals for handling minority participations	We agree with ZKA final statement.
	Aviva	Aviva supports the proposed options 1A (guidance on the 'durable link' criterion) and 1B (guidance on how to include participations in the calculation of the threshold tests for conglomerates. Aviva also agrees with the proposed legislative change to the FCD to allow scope for supervisors not to treat a group as a conglomerate where the group only has participations rather than subsidiaries in the smallest sector, provided this is supplemented by appropriate risk based guidance on the circumstances in which it might still be appropriate to regard the group as a conglomerate, eg the particular risk profile of the group	Agree. Agree and noted.
Q14 Could you suggest what issues the guidance should address and provide evidence to support your suggestion?	ZKA	As stated with regard to Q 13, we consider statutory regulation in the EU-Directive preferable. In our opinion, this would better ensure that participations would only be taken into account if they enabled a not insignificant influence to be exerted in the company in question.	The FCD has different objectives to those of the IASB. See amended page 32 and paragraph 109.
	EACB	As explained above (Q13) we think that there are good reasons why a regulatory solution would be preferable. It could be stipulated, in particular, that only those participations considered, where a significant influence on the company can be exerted.	Noted. Please see response to ZKA Q14.

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Reference	**Name Company**	**Respondent's comment/answer**	**CEBS/CEIOPS Response and where appropriate resolution**
Other comments on chapter 4	BBA	From a conceptual perspective, we support the distinction made by the JCFC: - It needs to examined how the concept of "participations" affects the identification of financial conglomerates; - It needs to be examined how participations should be treated. Although participations may be excluded from the identification process, this may not mean that they should be excluded when calculating supplementary capital requirements. We agree that implementing these proposals would be an improvement compared to the current situation. However, we are not convinced that they would result in an optimal situation. "Participation" is defined in the 4th Company Law Directive as rights in capital which create a "durable link". We feel that the notion of a "durable link" is not bringing added value and introduces complexity. We feel that "factual control" should be used as a criterion instead: if there is no factual control, the entity should not be made subject of supplementary supervision.	Agree. Agree. We do not support this view please see amended Chapter 4, Pages 30-31 provides further detail to this concept.

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Reference	**Name Company**	**Respondent's comment/answer**	**CEBS/CEIOPS Response and where appropriate resolution**
Chapter 5	The treatment of "participations" in respect of risk concentrations (RC) and intra-group transactions (IGT) supervision and internal control mechanisms		
Q15 Do you agree with the above analysis?	BBA	yes	Agree.
	CEA	We support the analysis of the JCFC. It is difficult for undertakings to comply with the RC and IGT requirements of the FCD when they do not control the participations. Please see our comments to Consultation Paper 61 (Intra-group transactions and risk concentration) for Solvency II Level 2 implementing measures.	Agree. Noted.
	EACB	We very much appreciate that the JCFC addresses the problem of access to information of companies, in which minority participations are held. This is a matter of high practical relevance. There is also the problem that very often it is impossible to accomplish that a company, in which minority participation is held, submits to the conglomerate's risk management system and its orientations.	Noted. Noted.

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Reference	**Name Company**	**Respondent's comment/answer**	**CEBS/CEIOPS Response and where appropriate resolution**
	EBF	EBF Answers to Q 15 to 17: We agree that a more transparent and risk-based approach should be promoted within this framework and would like to suggest addressing this by means of a legislative change which would amend the definition of the concept of "intra-group transactions" (i.e. "all transactions by which regulated entities within a financial conglomerate rely either directly or indirectly upon other undertakings within the same group or upon any natural or legal person linked to the undertakings within that group by "close links", for the fulfillment of an obligation, whether or not contractual, and whether or not for payment"). The qualification made that the regulated entities within a financial conglomerate need to rely upon another person or undertaking for the fulfillment of an obligation" is too vague. Therefore, more guidance would need to be provided to clarify the concept.	Noted. The definition of Intra Group Transactions is outside the scope of this review. However, this issue is under discussion in a number of fora e.g. CEIOPS CP 61 and CEBS' work in respect to the review of the Large Exposure regime.
	FBF	Yes. We agree on the analysis provided by the JCFC. It is obvious that when a conglomerate has no control over an entity, as in the case of participations, it may not be able to obtain or have access to the necessary information to comply with risk concentration and intra-group	Agree. We recognise limitations on what information can be obtained from a non controlled entity but that does not mean they are outside

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		transactions requirements. As it is clearly stated, it is not in a position to implement adequate internal control mechanisms and risk management processes.	scope of the framework of risk concentration Intra group transaction and risk management for the reasons stated in the paper.
	GDV	We support the analysis of the JCFC. It is difficult for the industry to comply with the RC and IGT requirements of the FCD when an undertaking does not control the participation. Please see our comments to Consultation Paper 61 (Intra-group transactions and risk concentrations) for Solvency II Level 2 implementing measures.	Agree. Noted.
	ZKA	The problem to access all the relevant informations with regard to minority participation is of great relevance to practice and we welcome the fact that the JCFC emphasises this area in their analysis. There is also the problem that it is frequently impossible to bring the company in which the minority participation is held to subject itself to the risk management system of the conglomerate.	Agree. We note this view as this is an entity within the scope of supervision for reasons set out above.
	Aviva	Yes	Agree.
Q16 Do you agree to the proposed	BBA	yes	Agree.

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recommendations? (Yes / No) If No, please elaborate on your alternative proposal.			
	CEA	We agree that Level 3 guidance is required. It is difficult for us to give any more specific views before we see the content of the Level 3 guidance.	Noted.
	EACB	We fear that guidelines will not fully solve the problems relating to minority participations, since they could in some points contradict the provisions of the FCD. We would therefore prefer a solution that implies an amendment of the FCD.	We do not support this view as detailed in Option 1.
	FBF	No. We believe that risk concentration and intra-group transactions supervision, internal control mechanisms and risk management processes should be limited to controlled companies fully or proportionally consolidated. Participations and companies consolidated under the equity method should be excluded from IGT/RC/IG.	We believe this is within risk management framework as further set out in Chapter 5, paragraph 157 of the paper.

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	GDV	Concerning supervisory reporting requirements on intra-group-transactions and risk concentrations consistency with Solvency II (Level II) should be ensured. Art. 248/9 of the Solvency II directive instructs the supervision of risk concentrations/intra-group transactions which could be accompanied by implementing measures ("The Commission may …").	Noted. Conglomerates need to be able to address both inter sector and intra sector issues. The FCD needs to take account of both banking and insurance.
	ZKA	In the preparation of guidelines for handling minority participations, there is a problem that these may contravene the clear specifications of the FCD. We therefore suggest that the problems be solved by changing the FCD itself.	We do not support this view as detailed in Option 1.
	Aviva	Yes, Aviva supports option 1 ie additional level 3 guidance on how participations should be treated for the purposes of assessing conglomerates' risk concentrations, intra-group transactions and supervision and internal control mechanisms.	Agree.
Q17 Could you suggest what issues the Level 3 guidance	CEA	In our view it would be essential that the guidance covers two of the issues covered in the consultation paper (access to all relevant information, and how to treat participations which are unregulated	Noted.

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should address and provide evidence to support your suggestion?		entities). The guidance should explain to supervisors how to apply the IGT and RC provisions in the FCD when the undertaking does not control the participation or when the participations are unregulated. We would ask that the guidance would be consistent with Solvency II and any possible Solvency II Level 2 implementation measures.	
	EACB	There should be provisions in the FCD, according to which an obligation to provide information on companies, in which a minority participation is held, requires that there is in fact access to such information. Furthermore, we suggest establishing provisions, according to which unregulated entities, as well as participations, in which no relevant influence can be exerted, are exempt from articles 7, 8, and 9 of the FCD. Furthermore we suggest clarifying that only those IGTs are of relevance under the FCD, which are cross-sectoral transactions. Intra-sectoral transactions are dealt with under sectoral supervision so that there is no need for complementary information requirements on the conglomerate level. We therefore stress the importance of the analysis of the JCFC under Nr. 144 b and strongly encourage addressing this matter in future guidelines. The term "IGT" seems to require more clarification within the context of financial conglomerates. Art. 2 (18) FCD only refers to transactions,	Noted. See response to GDV Q16. Noted. Noted, Article 8 has an interim general threshold of 5% (a different threshold for a specific conglomerate

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		where companies of the conglomerate „rely" on other companies for the fulfillment of an obligation. Such definition would not include certain transactions such as day-to-day funding transactions. This should be more developed in guidelines as well. For the purpose of an alignment with the large exposure regime, we suggest establishing a materiality threshold for IGT of 10% of own funds. Systematic convergence could be improved by changing the terminology regarding the relevant level of capital. As it is the case under article 108 CRD, reference should be made not to" capital adequacy requirements", but to „own funds" A convergence of practice could be achieved regarding risk concentrations, if participations where considered pro rata (as it is the case under the large exposures regime). Thus the existing data basis could be used.	can be fixed according to FCD Annex 2) whereas large exposure is fixed. However, this goes beyond the scope of this review. Noted. To be noted that FCD Annex II makes reference also to thresholds based on own funds.
	GDV	In our view it would be essential that the guidance covers two of the issues covered in the consultation paper (access all relevant information, and how to treat participations which are unregulated entities). The guidance should explain to supervisors how to apply the IGT and RC provisions in the FCD when the undertaking does not control the participation or when the participations are unregulated. We would ask	Noted.

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		that the guidance would be consistent with Solvency II and any possible Solvency II Level 2 implementation measures.	
	ZKA	The FCD should ensure that information about the company in which a participation is held must be obtained only if it can actually be obtained. A corresponding regulation must also be drawn up for inclusion in the risk management system of the conglomerate. Furthermore, it should be arranged that unregulated entities as well as participations on which no significant influence is exerted be exempt from the application of Articles 7, 8 and 9 FCD. It should also be clarified that for IGT no intra-sectoral transactions are documented, but rather cross-sectoral transactions. Intra-sectoral transactions are already covered by the sectoral guidelines (CRD), so that no additional requirement exists for these reports at the conglomerate level. Here only the inter-sectoral transactions are relevant. We therefore emphasise once more the analysis included in the paper of the JCFC under sub-paragraph 144b and urgently recommend the inclusion of this item with the aforementioned conclusion in the guidelines. Furthermore, the concept of the IGT with regard to financial conglomerates should be clarified: Art. 2 (18) FCD defines transaction	Please see response to EACB Q17.

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		only as those by which entities within a financial conglomerate "rely" on other undertakings in the same group. With this, certain transactions such as day-to-day funding will not be covered by the term "intra-group transaction". This should be defined in more concrete terms in guidelines. Finally, in order to achieve synchronisation with the large exposure regulations, we suggest a materiality limit of 10% for IGT. Furthermore, in this context it is useful as part of a terminological and systematic harmonisation to link the threshold value, analogous to Article 108 CRD, to the actually available own funds and not to the capital requirements. For reasons of harmonisation, it also appears appropriate with regard to the risk concentrations to take participations into account quota-wise corresponding to the large exposure requirements. In this manner the existing database can be used.	
	Aviva	Guidance needs to effectively address the problem of getting information out of participations.	Noted. Article 14(2) gives the supervisors the power to access relevant information for the purposes of supplementary supervision this is addressed in paragraph 144.

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Other comments on chapter 5	BBA	We are concerned with the concept of "intra-group transactions" which the FCD defines as "all transactions by which regulated entities within a financial conglomerate rely either directly or indirectly upon other undertakings within the same group or upon any natural or legal person linked to the undertakings within that group by "close links", for the fulfilment of an obligation, whether or not contractual, and whether or not for payment".	
		- The use of the word "transaction" is inappropriate as it is too broad. "Exposure" is more appropriate.	Agree. We view that transactions reflects a broad set of relationships that can exist within a group, which is broader than just "exposures".
		- The qualification made that the "regulated entities within a financial conglomerate" need to "rely upon another person or undertaking for the fulfilment of an obligation" is vague. Therefore, more guidance should be provided to clarify the concept.	Noted.
		NB: In the European Banking Federation's 2008 comments to CEBS, which the BBA contributed to, the EBF had observed that the FCD is uncertain whether the concept covers inter-sectoral transactions as well	Noted. We view that the Financial Conglomerates reporting should build off sectoral reporting. Please see

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		as intra-sectoral transactions. The EBF had argued that, as intra-sectoral transactions are already covered under the Capital Requirements Directive (CRD), it would be appropriate that conglomerates report on inter-sectoral transactions (above a certain threshold) only.	earlier response to CEA Q2.
	CEA	Please see our comments to Consultation Paper 61 (Intra-group transactions and risk concentration) for Solvency II Level 2 implementing measures.	Noted. See response provided earlier on Q15.
	GDV	Please see our comments to Consultation Paper 61 (Intra-group transactions and risk concentrations) for Solvency II Level 2 implementing measures.	Noted. See response provided earlier on Q15.
Annex I definitions	CEA	Solvency II definitions are missing, e.g. -"parent undertaking" is defined in Article 13 (12) -"subsidiary" is defined in Article 13 (13).	Noted, and Annexes will be updated accordingly to reflect changes.
	GDV	Solvency II definitions are missing, e. g. -"parent undertaking" is defined in Art. 13 (12) -"subsidiary" is defined in Art. 13 (13)	Noted, and Annexes will be updated accordingly to reflect changes.