

Comments Template on EBA, EIOPA and ESMA's Joint Consultation Paper on its proposed response to the European Commission Call for Advice on the Fundamental Review of the Financial Conglomerates Directive

Deadline:
13.08.2012
cob

Stakeholders:

Joint response of the following Service Providers of Pension Funds in The Netherlands

- APG Algemene Pensioengroep N.V., Gustav Mahlerplein 3, 1082 MS Amsterdam, The Netherlands
- MN, Prinses Beatrixlaan 15, 2595 AK Den Haag, The Netherlands
- PGGM, Noordweg Noord 150, 3704 JG Zeist, The Netherlands
- Syntrus Achmea, Rijnzathe 10, 3454 PV De Meern, The Netherlands

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

Please follow the instructions for filling in the template:

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

Please send the completed template to joint-committee@eba.europa.eu, jointcommittee@eiopa.europa.eu, and joint.committee@esma.europa.eu, in MSWord Format, (our IT tool does not allow processing of other formats).

CFA Questions	Comments
General Comments	We are in favour of well functioning and stable financial markets in the European Union. Adequate supervision of financial markets and financial markets participants in the EU should contribute to this. As a consequence in principle, we support the FICO-Directive and potential measures which could reinforce its application in practice. Of course it is clear that supervision and regulation should not be a goal in itself. In that respect we welcome the Call for Advice. As regards the general question we do not believe that IORPs should be included in the Financial Conglomerates Directive. Basically, the risks to be hedged by the FICO-Directive (double gearing, excessive leveraging, etcetera) are not relevant for IORPs in this context, since these risks are already adequately covered by the existing IORP-

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	Directive (2003/41) and its ongoing revision. Adding FICO-supervision would imply double (and potentially contradictory) supervision. Furthermore, we are pleased to provide our input as follows:
1.	<p>For several reasons, in our opinion, IORPs should not be included as being part of a financial conglomerate. Option 2 (:Maintain the status quo”) should be chosen.</p> <p>First of all there is, at least in the Netherlands, no group-relation between a company (e.g. a financial institution) and “its” pension fund (IORP). Under Dutch law, second pillar pension funds are legally and financially independent institutions, normally in the legal form of a foundation. Participation in second pillar pension funds is mandatory for more than 90% of Dutch employees. Pension funds are set up as independent non-profit organisations and do not form part of the sponsoring company (employer) or any other company, nor do they have shareholders to whom they have to pay dividends. Profits, losses and costs are only to the advantage or detriment of (the value of benefits of) participants and pensioners (beneficiaries) and sponsoring employers, if bound by contract to pay up for deficits. The, at least in the Netherlands, usually only existing relation is the obligation for the sponsor company/employer to pay a fixed contribution (normally limited by the pension arrangement) to the IORP. As a consequence there is no regulatory arbitrage, the main argument in favour for FICO-supervision.</p> <p>The relation between the sponsor company and the IORP is already governed by the current rules of the IASB, in particular the rules of IAS 19R (International Accounting Standards Revised) which have recently been revised and will enter into force as of 1 January 2013. The rules of IAS 19R prescribe which results and risks in relation to the IORP should be included in the balance sheet and profit and loss account of the sponsor/company. These results and risks will usually only consist of the contributions obliged.</p> <p>A revised FICO-Directive which, contrary to these facts, would assume a group-relation including inherent risks of double gearing and excessive leveraging (and, as a consequence, an obligation to consolidate the balance sheets of the sponsor/company and the IORP) would undermine the above mentioned accounting rules and thus lead in practice to major confusion.</p> <p>Another relevant factor which should be taken into account in this context, is the attribution of profits, losses and costs related to a pension fund: generally two thirds of pension premiums are paid by the employer and one third by the employees, profits and losses and costs are in principle to the advantage or detriment of the participants and pensioners and only for the account of the sponsoring employer if he is bound by contract to pay for deficits (also see above). This leads to the conclusion that (at least in the Netherlands) the results and risks related to an IORP are already to a substantial degree borne by the participants. Recent pension reforms in EU Member States show that this trend will even increase in the future. Including pension results and risks in the accounts of the sponsor/employer (which would be the result of incorporating IORPs in the FICO Directive) would contradict this circumstance and</p>

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future trend.

Due to these factors (IORPs in the IAS-Accounting rules not on the balance sheets of conglomerates, risks ultimately fall on the participants of the pension fund) the potential benefits of bringing IORPs within the scope of the FICO-Directive will be substantially lowered, as has also been pointed out in the Joint Consultation Paper of EBA, EIOPA and ESMA (see Par. 5.1).

Furthermore it can be noted that, even if IORPs (on the contrary to the aforementioned arguments) were to be included as part of a financial conglomerate, this would probably turn out to be meaningless in practice. The risks to be hedged by the FICO-Directive (double gearing, excessive leveraging, etcetera) are not relevant for IORPs. These risks are already adequately covered by the existing IORP-Directive (2003/41) and its ongoing revision. Article 18 of the IORP-Directive already regulates transactions (e.g. investments) between an IORP and a company/sponsor in an adequate manner. Adding FICO-supervision would imply double (and potentially contradictory) supervision.

In addition, attention should be paid to the fact that the risks related to IORPs differ fundamentally from banks and insurance companies and their risks. Contrary to these financial sectors which are profit-seeking and have commercial shareholders, IORPs are not-profit-seeking institutions. Their only aim is to realise adequate pension payments to participants. As a consequence there is no incentive for IORPs to enter into activities which could provoke the afore-mentioned risks addressed by the FICO-Directive. Even stronger under Dutch pension regulation pension funds are not allowed to be involved in other activities other than pension related activities. Therefore additional supervision within the FICO framework is not necessary.

In this respect it can be argued, as also done by EBA, EIOPA en ESMA in their Joint Consultation Paper (see Par 4.1.4.1., nr. 39), that the IORP-Directive already provides for an efficient instrument to take these and other specificities of IORPs into account. Setting a specific (FICO-)framework for IORPs at a moment (as is the case now) that the general (IORP-) framework is under review is undesirable.

Last but not least it should be considered that, if IORPs are brought under the scope of the FICO-Directive, this would result in additional costs for conglomerates/pension funds and supervisory authorities (which will charge these costs to these conglomerates/pension funds). This would on a short term lead to a decrease of pension benefits, and could on the long term lead to a reduction in the supply of pension schemes. This would be contrary to the goal of the European Commission, as expressed in for example her White Paper on Pensions (February 2012), of increasing the provision of adequate supplementary pensions in the EU.

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Annex H Questions	
General Comments	
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