Comments Template on EBA, EIOPA and ESMA's Joint Consultation Paper (JC CP 2012 01) on its proposed response to the European Commission Call for Advice on the fundamental Review of the Financial Conglomerates Directive	**Deadline: 13.08.2012 cob**
Stakeholder:	EACB – European Association of Co-operative Banks

The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralized networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4.000 locally operating banks and 63.000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 176 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 50 million members and 750.000 employees and have a total average market share of about 20%.

For further details, please visit www.eurocoopbanks.coop

Address: Rue de l'Industrie 26-38 B-1040 Brussels
Tel: (+32 2) 230 11 24
Fax: (+32 2) 230 06 49
E-mail: secretariat@eurocoopbanks.coop
Enterprise: 0896.081.149
Lobbying register: 4172526951-19

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CFA Questions	**Comments**
General Comments	➢ EACB welcomes the review of the Financial Conglomerates Directive (FiCoD). The FiCoD is now implemented for more than 10 years. The recent developments in the international and European regulatory frameworks for banking and insurance sectors may have to be reflected on. ➢ FiCoD provides a robust regulatory framework but it should not be changed before Basel III and Solvency II are in place. It is important to give the necessary time to implement the new sectoral rules before changing the rules at the conglomerate level. Moreover, the regulation should be rather stable to give the industry the possibility to take good business decisions. ➢ It is, in particular, important to reflect on the way FiCo capital requirements will be calculated. Currently, FiCo capital requirements are calculated based on the sectorial minimum requirements (excluding buffers). Annex G of the current consultation paper is unclear whether the capital requirements for a FiCo will be based on insurance sector's and banking sector's capital requirements with or without buffers. ➢ Including the buffers from Solvency II (SCR) and CRD IV/CRR I (capital conservation buffer) would change the concept of current FiCo capital requirements, and would shrink the current supplementary capital ratios. Sectorial capital buffers should not be taken into the calculation of the FiCo capital requirements for the following reasons: • Buffer requirements may differ from one country to another. This might raise level playing field issues and also make comparison between FiCos capital adequacy difficult. • The sectorial buffer requirements would limit the amount of transferable own funds inside a FiCo, which would lead to very low FiCo capital adequacy ratios calculated according to current formulas. Capital planning inside a FiCo would also have very limited possibilities. • Currently FiCo capital requirement is a minimum requirement, which can not be breached without serious consequences. If the sectorial buffer requirements are included in FiCo capital requirement calculation, this would imply that the FiCo capital requirement would not anymore be a minimum requirement in the same way as it is currently. It would rather mean that this requirement can be breached, while distributions would be limited (if CRD4 logic would be applied). Consequently, the whole basis of FiCo capital requirement would have to be revised when drafting FICOD2.

	➢ Considering these issues the most appropriate approach would be to introduce a separate FiCo level buffer requirement in addition to FiCo minimum requirement, while minimum requirement would consist of consolidated sectorial minimum requirements as it is now. ➢ Risk concentrations thresholds should be in line with sectorial rules and should under no circumstances be lower than sectorial thresholds. Too low thresholds would lead to unnecessary administrative burden to FiCo's and overwhelming reports to the supervisors.
1. **What should be the perimeter of supervision, when a financial conglomerate is supervised on a group wide basis?**	➢ As a general rule and in light of the new accounting standards IFRS 10 (dealing with the inclusion of all material risks borne by the conglomerates), we consider that the supplementary supervision perimeter should be aligned with the accounting consolidation perimeter. In the case of financial conglomerates headed by a supervised entity, the perimeter of supplementary supervision should consist of entities included in the accounting consolidation at the highest consolidation level of the group. In the case of mutual banking groups, this perimeter would include entities consolidated in the balance-sheet of the central body, as well as the regional banks and their subsidiaries. ➢ An exemption can be foreseen for entities whose inclusion would lead to inappropriate figures. This exemption can be subject to approval by the competent authority on a case-by-case basis (e.g. temporary holdings). ➢ Financial conglomerates should consolidate SPV / SPE depending on the extent to which those entities are controlled by the group and depending on conglomerates' exposure to risks. SPVs controlled by the FiCo and SPVs to which the group has a significant exposure could be consolidated even if the FiCo does not have the majority of risks and/or revenues. ➢ The inclusion of IORPs in the scope of FICOD should also follow the accounting consolidation. It is important to note, though that IORPs are not in the scope of Solvency2 regime, they have different structures (for some the risks and benefits are to employees, for others risks are carried by employers) in some countries consolidation of IORPs is prohibited by law and in the case of defined benefit pension funds, assets are deducted or risk-weighted under CRR I. In this context, it should be clarified which specific risks IORPs would pose to a financial conglomerate that do not exist at sectorial level. Specific requirements in the context of a financial conglomerate should be justified. ➢ EACB appreciates the effort to take into consideration for the scope of FICOD all the financial activities

	that pose relevant risks to the group, regardless whether the head of the group is a regulated entity. All relevant holding companies (MFHC, MAHC and MAIHC) should be subject to supervision. Group supervision should be the only relevant supervisory level and all supervision should be only made at the highest consolidated level. ➢ Supervision should not be the reason for organisational changes. Such a requirement would be a too far-reaching and could lead to an unjustifiably interference in the governance of the company. On the other hand, supervisors should be given the necessary tools and principles to designate technical supervisory group structures for regulatory purposes which could deviate from normal group structure - if necessary from supervisory point of view. ➢ Unregulated entities and regulated entities' interactions within a financial conglomerate should be taken into account as "environmental" factors as part of the Pillar 2 process for banks and as part of the Own Risk and Solvency Assessment (ORSA) for insurers. The regulation should not be extended to unregulated entities. This will ensure that unregulated entities should not be treated differently because they are part of a financial conglomerate than the unregulated entities which are part of other regulated financial groups.
2. **Given your experience and expertise, which legal entity in a conglomerate should be responsible and qualify for compliance with group wide requirements, i.e. which legal entity should be the responsible parent entity?**	➢ As an association representing co-operative banks of different structures we are concerned about different control rapports than the usual parent-subsidiary relationship. In case of groups formed by institutions permanently affiliated to a central body as in Article 3 of the CRD3, the central body referred to should be the responsible entity. FiCoD should also recognise these kinds of group structures and not be restricted to "normal" parent-subsidiary structures. ➢ The legal entity that should be responsible to implement, calculate and monitor group wide requirements, on behalf of all entities included in the supplementary supervision in the case of mutual banking groups should be the central body as defined by national laws.
3. **Given your supervisory**	➢ We support the application of all regulatory requirements to the responsible entity. However, sectorial requirements especially regarding governance issues should not be duplicated by FICOD2. For

experience and expertise, which requirements should be imposed on this qualified parent entity in the context of group wide supervision?	example group level integrated ICAAP/ORSA documentation should be sufficient to cover all relevant aspects of respective FiCo related requirements with only minor additions from a FiCo perspective. Separate FiCo-ICAAP/ORSA should not be required in addition to sectorial group level documentation which already includes the relevant FiCo aspects. ➢ The requirement for the responsible entity to have "*a directing role over the entities of the conglomerate*" is excessive. In many countries such a requirement would breach the company law and possibly other existing national legislations creating legal uncertainty. As long as the supervisor is entitled to designate a specified regulated entity as point of entry (tool 3), we don't see the need to develop additional requirements towards the ultimate responsible entity or a specific enforcement regime.
4. **Given your supervisory experience and expertise, which incentives (special benefits or sanctions) would make the enforcement of the group wide requirements more credible?**	➢ EACB supports addressing all sanctions to responsible entity. The responsible entity should be required to make necessary corrective measures in regards of other entities in the group. Possible benefits from rigorous internal enforcement of prudential rules and principles should be studied further. ➢ It is worth clarifying that such sanctions should only be used to address problems relating to financial conglomerates' supervision and should not cover sectorial issues. In particular, it should not seek to address shortcomings in the insurance sector prudential regulation. This could create an unlevel playing field with insurance companies not under the FiCo supervision.
5. **When reflecting upon this advice, would supervisors in Europe need other or additional empowerment in their jurisdictions?**	➢ As regards the possible development of binding technical standards for a common reporting scheme on risk concentrations and intra group transactions further cost / benefit analysis should be performed, In some member States where financial conglomerates are already subject to intra-group transaction or concentration limits and restrictions, it is questionable whether far more detailed common reports on this added value. ➢ Relating the internal controls suggestions EACB would like to remind that there are already sectorial regulations providing for detailed rules. We strongly advise not duplicating sectorial regulations in the Financial Conglomerate directive. However, the coordination duties at group level should include coordination of internal controls mechanisms.

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Annex H Questions	
General Comments	
1. How many additional conglomerates would be in the scope of the FICOD if **a. IORP Pension funds were to be included?** **b. SPV/SPEs were to be included?**	
2. What characteristics would these new financial conglomerates have (size, type etc...)?	
3. What would be the scale of additional capital requirements (and the differences in the quality of capital?) if **a. IORP Pension funds were to be included?** **b. SPV/SPE were to be**	➢ IORP pension funds do not have an established EU-wide regulatory framework (like Solvency II), therefore IORP capital requirements may differ from one country to another. It is unclear which capital requirement should be used for IORPs, if they would be included in FiCos.

included?	
4. Please provide some information on the potential additional compliance costs were your group to be identified as a conglomerate under these proposals.	➢ It is clear that wider requirements imply more costs. However, the proposals are at such a broad level, that it is impossible to present even a preliminary cost estimate at this stage.
5. Please could national supervisors provide an estimate of the additional resources required were the scope of supervision to be enlarged as envisaged in this proposal.	