

## Consultation of

### ESA's Joint Consultation Paper on Guidelines on the convergence of supervisory practices relating to the consistency of supervisory coordination arrangements for financial conglomerates

#### Comments of the German Insurance Association

Reference/Paragraph	Comments
2. Executive Summary	<p data-bbox="786 512 1043 544"><b><u>General Comments:</u></b></p> <p data-bbox="786 576 1877 695">The German Insurance Association basically supports the efforts of the ESAs to converge the supervisory practises on financial conglomerates in Europe. Consistent and harmonised requirements on coordination arrangements of supervisory colleges might prove to be useful in this respect.</p> <p data-bbox="786 727 1877 943">However, the consultation paper remains silent about an important aspect of financial conglomerates supervision, which is the future cooperation between the ESAs and the European Central Bank (ECB). Article 4 Section 1 (h) of Council Regulation 1024/2013/EU empowers the ECB to participate in the supplementary supervision of a financial conglomerate in relation to the credit institutions included in it and to assume the tasks of a coordinator where the ECB is appointed as the coordinator for a financial conglomerate in accordance with the criteria set out in relevant Union law.</p> <p data-bbox="786 975 1877 1222">Given that the ECB shall exercise its tasks in close cooperation with the ESAs (Article 3 of of Council Regulation 1024/2013/EU) and the assignment to develop technical standards, guidelines and recommendations should rest with the EBA respectively the ESAs (Recital 32 of Council Regulation 1024/2013/EU), clarification is needed how the ECB and its special role should be integrated in the coordination agreements. This relates both to the allocation of tasks and responsibilities within the college and in particular to the cooperation between the supervisory authorities involved if the ECB acts as coordinator for the financial conglomerate.</p> <p data-bbox="786 1254 1877 1372">We therefore encourage to ESAs to engage in a dialogue with the ECB in order to discuss the implications of an ECB-involvement. From an insurance perspective, it is paramount that all authorities are aware of the restrictions of ECB supervisory powers with regard to insurance undertakings as part of the conglomerate, no matter whether an insurance-led or</p>

	a bank-led conglomerate is concerned. Council regulation 1024/2013 limits the exercise of supervisory powers of the ECB on credit institutions. This is in line with Article 127 (6) of the Treaty on the Functioning of the European Union (TFEU) which actually prevents the Council from delegating powers relating to the prudential supervision of insurance undertakings to the ECB. It needs to be ensured that the ban on granting supervisory powers to the ECB according to Article 127 (6) TFEU is not violated. Therefore, the guidelines should explicitly clarify that the decisions taken by the ECB, especially in its capacity as coordinator, must not affect the insurance entities belonging to the financial conglomerate.
1	Article 11 of Directive 2002/87/EC requires the coordinator and the competent authorities to have written coordination agreements in place. However, Article 11 does not grant a legal mandate for the ESAs to specify these agreements through guidelines. Neither does Article 12b of Directive 2002/87/EC, according to which common guidelines are limited to risk-based assessments of financial conglomerates and supplementary supervision of mixed financial holding companies. Thus, we would recommend to reconsider the issue and clarify the mandate.
2	We note that the guidelines aim to supplement the functioning of sectoral colleges. At the same time, EIOPA is currently consulting extensive guidelines on the operational functioning of supervisory colleges set up in accordance with Directive 2009/138/EC. For insurance-led conglomerates it is very important that these colleges won't be overburdened with procedural requirements which are likely to impede the effectiveness and efficiency of supervisory processes. Therefore, we kindly request the ESAs to investigate synergies between the guidelines in order to avoid overlapping or even conflicting requirements.
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<b>3. Background and Rationale</b>	
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<b>4. Draft Joint Committee Guidelines on the convergence of supervisory practices relating to the consistency of supervisory coordination arrangements for financial conglomerates</b>	
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<b>Title I – Subject matter and scope</b>	
1	Absent a consolidated version of Directive 2002/87/EC, we recommend to add Directive 2011/89/EC in the reference included in footnote 2 since Article 11 (1) was revised by the FICOD-review.
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3	The references included in footnotes 3 and 4 are flawed; footnote 3 refers to the text of footnote 4; footnote 4 needs to refer to Directive 2009/138/EC. Since both Directives are already cited in paragraph 1, the corresponding references should be placed there.
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<b>Title II – Mapping procedure, cooperation structure and coordination arrangements</b>	
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16	We suggest to clarify that the mapping refers to the regulated entities of the group defined in paragraph 15. Therefore, paragraph 16 should introduce as follows:  <i>„According to the regulated entities described in paragraph 15 the mapping should identify: [...]”</i>
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<b>Title III – Coordination of information exchange in going concern and emergency</b>	

<b>situations</b>	
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29	<p>We understand that the competent authorities involved, and especially the coordinator, should obtain from the entities within a financial conglomerate the information necessary for the performance of their supplementary supervision. However, as a general rule, the coordinator should be the authority which channels and define requests and eventually approaches the head or the ultimate responsible entity of the conglomerate for information. This is one of dominating motives why a coordinator is appointed. Accordingly, the direct interaction between competent supervisory authorities and the head of the conglomerate should be limited to exceptional cases, such as emergency situations.</p>
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<b>Title IV – Supervisory assessment of financial conglomerates</b>	
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<b>Title V - Supervisory planning and coordination of supervisory activities in going concern and emergency situations</b>	

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49	Lessons learned from the supervision of financial conglomerates so far clearly indicate that a regular exchange of experiences among supervisory authorities involved improve the understanding of the risk situation the conglomerate is operating under. This will help supervisors to focus their efforts and resources on issues which are material for the purpose of supplementary supervision. We are afraid that a minimum cycle of yearly meetings is not sufficient to materialize the benefits from face-to-face encounters. The ESAs may want to consider semi-annual meetings at a minimum.
50	See comments on paragraph 49.
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<b>Title VI - Other decision-making processes among competent authorities</b>	
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<b>Title VII - Final provisions and implementation</b>	
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<b>5. Accompanying Documents</b>	
<b>5.1 Draft cost-benefit analysis / impact assessment</b>	
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<b>5.2 Overview of questions for consultation</b>	
1. Do you agree with the suggested scope of the guidelines with respect to the mandate given under Article 11 of the Directive 2002/87/EC (FICOD)?	With respect to the mandate to issue these guidelines we refer to our comments on paragraph 1 of the Executive Summary.
2. Should the mapping process identify any other kind of undertakings and participations held by the parent undertaking or any of the subsidiaries of a financial conglomerate, apart from those described in paragraph 16?	No. We refer to our comments on paragraph 16.
3. Do you consider appropriate the minimum number of meetings described in paragraphs 49 and 50?	No. We refer to ur comments on paragraph 49.
4. Do you agree with the analysis of the impact of the proposals in this CP? If not, can you provide any evidence or data that would further inform the analysis of the likely cost and benefit impacts of the proposals?	