Supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate

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In accordance with the requirements of Directive 2011/89/EU (FICOD1), the Commission presents a review of Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (FICOD). It recalls that FICOD1 was adopted following the lessons learnt during the financial crisis of 2007-2009. FICOD1 amended the sector-specific directives to enable supervisors to perform consolidated banking supervision and insurance group supervision at the level of the ultimate parent entity, even where that entity is a mixed financial holding company. Furthermore, FICOD1 revised the rules for the identification of conglomerates, introduced a transparency requirement for the legal and operational structures of groups, and brought alternative investment fund managers within the scope of supplementary supervision in the same way as asset management companies.

The report notes that since the adoption of FICOD1 some issues, such as addressing systemic importance of complex groups, and recovery and resolution tools beyond the living wills requirement in FICOD1 have been or will be resolved in other contexts and have therefore become less relevant for this review.

The Commission considers that the most relevant issues that could be addressed in a future revision of the financial conglomerates directive are as follows:

The criteria for the definition and identification of a conglomerate: the two thresholds for identification of a conglomerate set out in Article 3 of FICOD take into account materiality and proportionality for identifying conglomerates that should be subject to supplementary supervision of group risks. The first threshold restricts supplementary supervision to those conglomerates that carry out business in the financial sector and the second restricts application to very large groups.

The combined application of the two thresholds and the use of the available waiver by supervisors have led to a situation where very big banking groups that are also serious players in the European insurance market are not subject to supplementary supervision. Furthermore, the wording of the identification provision may leave room for different ways to determine the significance of cross-sectoral activities. It could be improved to ensure consistent application across sectors and borders.

To ensure legal clarity, it is important to have easily understandable and applicable thresholds. However, the question remains whether the thresholds and the waivers should be amended or complemented to enable supervision in a proportionate and risk-based manner.

The identification of the parent entity ultimately responsible for meeting the group-wide requirements and the strengthening of enforcement with respect to that entity. The identification of the responsible parent entity would also enhance the effective application of the existing requirements concerning capital adequacy, risk concentrations, intra-group transactions and internal governance.

Given the inherent complexity of financial conglomerates, corporate governance should carefully consider and balance the combination of interests of recognised stakeholders of the ultimate parent and the other entities of the group. The governance system should ensure that a common strategy achieves that balance and that regulated entities comply with regulation on an individual and on a group basis.

CRD III and the proposal for CRD IV require further strengthening of corporate governance and remuneration policy following the lessons learnt during the crisis. The living will requirement in FICOD1 will be strengthened by the Bank Recovery and Resolution Framework. What these frameworks do not yet cover is the enforceable responsibility of the head of the group or the requirement for this legal entity to be ready for any resolution and to ensure a sound group structure and the treatment of conflicts of interest.

The report notes that the regulatory and supervisory environment with regard to credit institutions, insurance undertakings and investment firms is evolving. All the sectoral prudential regulations have been significantly amended on several occasions in the last few years, and even more significant changes to the regulatory rules are pending before the legislators. Furthermore, the proposal for the Banking Union significantly changes the supervisory framework. Therefore, the Commission considers it advisable **not to propose a legislative change in 2013.** It will keep the situation under constant review to determine an appropriate timing for the revision.