Basic information

2001/0095(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate Amending Directive 98/78/EC 1995/0245(COD) Amending Directive 2000/12/EC 1997/0357(COD) Amended by 2003/0263(COD) Amended by 2006/0300(COD) Amended by 2009/0161(COD) Amended by 2010/0232(COD) Amended by 2011/0203(COD) **Subject** 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.04 Banks and credit 2.50.05 Insurance, pension funds 2.50.10 Financial supervision	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	LIPIETZ Alain (V/ALE)	06/11/2000

Former committee responsible	Former rapporteur	Appointed
ECON Economic and Monetary Affairs	LIPIETZ Alain (V/ALE)	06/11/2000

Former committee for opinion	Former rapporteur for opinion	Appointed
JURI Legal Affairs and Internal Market	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
Economic and Financial Affairs ECOFIN	2424	2002-05-07
Economic and Financial Affairs ECOFIN	2393	2001-12-04
Economic and Financial Affairs ECOFIN	2444	2002-07-12

European Commission

Commission DG	Commissioner

Financial Stability, Financial Services and Capital Markets Union	

Key events

Date	Event	Reference	Summary
24/04/2001	Legislative proposal published	COM(2001)0213	Summary
02/05/2001	Committee referral announced in Parliament, 1st reading		
04/12/2001	Debate in Council		Summary
25/02/2002	Vote in committee, 1st reading		Summary
25/02/2002	Committee report tabled for plenary, 1st reading	A5-0060/2002	
13/03/2002	Debate in Parliament		
14/03/2002	Decision by Parliament, 1st reading	T5-0112/2002	Summary
12/07/2002	Resolution/conclusions adopted by Council		Summary
12/09/2002	Council position published	09754/3/2002	Summary
24/09/2002	Committee referral announced in Parliament, 2nd reading		
05/11/2002	Vote in committee, 2nd reading		Summary
05/11/2002	Committee recommendation tabled for plenary, 2nd reading	A5-0367/2002	
18/11/2002	Debate in Parliament		
20/11/2002	Decision by Parliament, 2nd reading	T5-0548/2002	Summary
16/12/2002	Final act signed		
16/12/2002	End of procedure in Parliament		
11/02/2003	Final act published in Official Journal		

Technical information

Procedure reference	2001/0095(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Amending Directive 98/78/EC 1995/0245(COD) Amending Directive 2000/12/EC 1997/0357(COD) Amended by 2003/0263(COD) Amended by 2006/0300(COD) Amended by 2009/0161(COD) Amended by 2010/0232(COD) Amended by 2011/0203(COD)
Legal basis	EC Treaty (after Amsterdam) EC 047-p2
Stage reached in procedure	Procedure completed
Committee dossier	ECON/5/16090

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0060/2002	25/02/2002	
Text adopted by Parliament, 1st reading/single reading		T5-0112/2002 OJ C 047 27.02.2003, p. 0416-0486 E	14/03/2002	Summary
Committee recommendation tabled for plenary, 2nd reading		A5-0367/2002	05/11/2002	
Text adopted by Parliament, 2nd reading		T5-0548/2002 OJ C 025 29.01.2004, p. 0026-0185 E	20/11/2002	Summary

Council of the EU

Document type	Reference	Date	Summary
Council position	09754/3/2002 OJ C 253 22.10.2002, p. 0001 E	12/09/2002	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2001)0213 OJ C 213 31.07.2001, p. 0227 E	24/04/2001	Summary
Commission communication on Council's position	SEC(2002)0995	20/09/2002	Summary
Follow-up document	COM(2012)0785	20/12/2012	Summary
Follow-up document	SWD(2013)0071	20/12/2012	Summary
Follow-up document	SWD(2017)0272	14/07/2017	
Follow-up document	SWD(2017)0273	14/07/2017	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
ECB	Document attached to the procedure	BCE(2001)0025 OJ C 271 26.09.2001, p. 0010	13/09/2001	Summary
EESC	Economic and Social Committee: opinion, report	CES1309/2001 OJ C 036 08.02.2002, p. 0001	17/10/2001	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act	
Directive 2002/0087 OJ L 035 11.02.2003, p. 0001-0027	Summary

Delegated acts	
Reference	Subject
2015/2824(DEA)	Examination of delegated act

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

2001/0095(COD) - 16/12/2002 - Final act

PURPOSE : to establish supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate. COMMUNITY MEASURE : Directive 2002/87/EC of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96 /EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council. CONTENT : New developments in financial markets have led to the creation of financial groups which provide services and products in different sectors of the financial markets, called financial conglomerates. Until now, there has been no form of prudential supervision on a group-wide basis of credit institutions, insurance and 2000/12/EC of the European Parliament and of the undertakings and investment firms which are part of such a conglomerate. Some of these conglomerates are among the biggest financial groups which are active in the financial markets and provide services on a global basis. If such conglomerates, and in particular credit institutions, insurance undertakings and investment firms which are part of such a conglomerate, were to face financial difficulties, these could seriously destabilise the financial system and affect individual depositors, insurance policy holders and investors. This Directive makes the following key provisions: - in order to be effective, the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate are applied to all such conglomerates, if their cross-sectoral financial activities are significant. This is the case when certain thresholds are reached, no matter how they are structured. Supplementary supervision covers all financial activities identified by the sectoral financial legislation and all entities principally engaged in such activities are included in the scope of the supplementary supervision, including asset management companies; - the Directive lays down the thresholds for identifying a financial conglomerate. Among the relevant provisions, the Directive states that cross-sectoral activities will be presumed to be significant if the balance sheet total of the smallest financial sector in the group exceeds EUR 6 billion. This provision does not apply under certain circumstances; - on the identification of a financial conglomerate, the Directive provides that competent authorities which have authorised regulated entities must identify any group that falls under the scope of the Directive. The coordinator has the task of advising the parent undertaking that the group has been identified as a financial conglomerate; - the competent authorities must assess at a group-wide level the financial situation of credit institutions, insurance undertakings and investment firms which are part of a financial conglomerate, in particular as regards solvency (including the elimination of multiple gearing of own funds instruments), risk concentration and intra-group transactions. The Directive lays down provisions on capital adequacy of regulated entities; - financial conglomerates are often managed on a business-linebasis which does not fully coincide with the conglomerate's legal structures. In order to take account of this trend, the requirements for management are further extended, in particular as regards the management of the mixed financial holding company; - all financial conglomerates subject to supplementary supervision have a coordinator appointed from among the competent authorities involved; - there is a pressing need for increased collaboration between authorities responsible for supplementary supervision, and to this end there is provision for cooperation and exchange of information between competent authorities; - credit institutions, insurance undertakings and investment firms which have their head office in the Community can be part of a financial conglomerate, the head of which is outside the Community. These regulated entities are subject to equivalent supplementary supervisory arrangements which achieve objectives and results similar to those pursued by the provisions of this Directive; - this Directive defines minimum standards and Member States may lay down stricter rules. ENTRY INTO FORCE : 11/02/03 DATE OF TRANSPOSITION : 11/08/04.

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

2001/0095(COD) - 04/12/2001

The Council took note of a report on progress made at the technical level on the proposal for a Directive. The work achieved up to now at Council level shows the willingness on the part of Member States to develop a specific Community framework for financial conglomerates on the model as laid down in the proposed Directive, whose quality is recognised. However, the first reading at technical level of the texts proposed has revealed a number of items for further examination. They concern the following fields in particular: - the scope of the Directive; - the designation of the authority which is to be in charge of supplementary supervision of conglomerates, and the tasks of that authority; - the proposed changes to the sectoral Directives as regards deduction of holdings.

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

2001/0095(COD) - 20/09/2002 - Commission communication on Council's position

The Commission considers that the common position is faithful to the objectives and the spirit of its proposal. The Commission also considers that the common position meets the main concerns of the European Parliament and follows the key elements of Parliament's amendments. The Commission believes that the common position achieves a good balance. The Commission hopes that the Directive can be approved by the end of the year, in line with the FSPS deadline, addressing a major loophole in EU financial regulation.

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

2001/0095(COD) - 24/04/2001 - Legislative proposal

PURPOSE: to lay down rules for supplementary supervision of regulated entities which have obtained an authorisation pursuant to Article 6 of Directive 73/239/EEC, Article 6 of Directive 79/267/EEC, Article 3(1) of Directive 93/22/EEC, or Article 4 of Directive 2000/12/EC, and which are part of a financial conglomerate. It also amends the relevant sectoral rules that apply to these regulated entities. CONTENT : the Lisbon Council has taken a strong commitment to integrate European financial markets by 2005 at the latest. A single financial market will be a key factor in promoting the competitiveness of the European economy, lowering the cost of capital for large and small companies. The aim of this Directive is therefore to ensure the stability of European financial markets, to establish common prudential standards for the supervision of financial conglomerates throughout Europe, and to introduce level playing fields and legal certainty between financial institutions. In doing so, the Directive will implement the recommendations of the G-10 Joint Forum on Financial Conglomerates. It will also meet the recommendations of the "Brouwer group" on stability in the financial sector which were endorsed by the Ecofin Council in Lisbon. The existing European legal framework for the supervision of financial institutions is incomplete. "Homogeneous" groups of financial institutions are already covered by EU-directives for specific prudential purposes. Directive 2000/12/EC relating on the taking up and pursuit of the business of credit institutions and Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions provide for the consolidation of banking groups, investment firm groups and bank/investment firm groups, whereas Directive 98/78/EC on the supplementary supervision of insurance undertakings in insurance groups applies additional group supervision over insurance groups. "Heterogeneous" financial conglomerate type groups combining institutions from the different sectors are only covered to a limited extent, and basically a comprehensive set of rules on the prudential supervision of financial conglomerates is lacking. The present EU prudential framework shows important overlaps and lacunae in respect of the regulation of financial conglomerates. Some Member States have acknowledged the imperfection of the present EU legislative framework for financial conglomerates and have either introduced or are planning to introduce national legislative measures on their own accord to address the supervisory concerns arising from the group structures described above. The proposal seeks to introduce specific prudential legislation for financial conglomerates. Furthermore, it takes the first necessary minimum steps to align the directives for homogeneous financial groups and for financial conglomerates (i.e. eliminating some of the major inconsistencies) in order to ensure a minimum equivalency in the treatment of these groups.

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

2001/0095(COD) - 13/09/2001 - Document attached to the procedure

The European Central Bank (ECB) broadly welcomes and supports this proposal. From its perspective, changes in financial markets prompted by the introduction of the euro call for a substantial enhancement of the mechanisms for cooperation between national authorities and also with the Eurosystem. In general, the ECB would see scope for the proposal to go further in clarifying certain issues than presently envisaged. 1) the definition and identification of a financial conglomerate: - there should be a procedure for identifying financial conglomerate. The initiative for reporting the existence of one could, in principle, be the responsibility of the entities comprising such a conglomerate; - the provision of collective asset management services should be included in the definition of financial sector; - management companies could be included in the definition of a regulated entity, thus subjecting them to supplementary supervision; - the threshold could include off-balance sheet items for the purposes of the calculation of the relevance of the banking and investment sectors within a group; - the proposal does not address the issue of partially-owned entities, where the calculation of thresholds using total balance sheet figures may be misleading. The proposal could allow for threshold calculation using figures on a pro-rata basis; - the ECB expresses some reservations relating to uniformity of application on the definition of "group". 2) the exercise of supplementary supervision and the role of the coordinator: - clarify whether the competent authority responsible for supplementary supervision is in fact the coordinator; - the identification of coordinator should be communicated to the entities comprising the financial conglomerate; - the appointment of coordinator should be

fixed for a specified minimum period of time; - the tasks of the coordinator should be expanded to include communicating to the public decisions which are relevant for the financial conglomerate; 3) crisis management: - the role of central banks would warrant the communication by the competent authorities and the coordinator to central banks, also in a crisis at the financial conglomerate level; 4) the cooperation and exchange of information between competent authorities: - there should not be any constraints upon this. 5) the reference in the proposal to central banks and the Eurosystem: - the wording should include the European System of Central Banks and the European Central Bank.

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

2001/0095(COD) - 12/07/2002

The Council took note of an interim report form the Economic and Financial Committee (EFC) on EU arrangements for financial regulation, supervision and stability. On the basis of an EFC note, the Council had a preliminary exchange of views on certain key issues such as comitology arrangements for financial regulation, political accountability, supervisory as well as financial stability arrangements, and adopted the following conclusions : - the Council welcomes the interim report of the Economic and Financial Committee (EFC) and invites the EFC, according to the principles agreed by the Council on 7 May 2002, and on the basis of the Resolution adopted by the Stockholm European Council and of Council Decision 1999/468/EC on comitology arrangements, and with the support of the Commission, to elaborate the new approach for all financial sectors based on the 'four-level Lamfalussy framework' for securities. The new approach should: - enhance cross-sectoral consistency, including facilitating consideration of issues related to financial conglomerates in the 'level 2' regulatory committee or committees, while taking into account the specificities of the insurance sector; and - take into account synergies between banking supervision and central banking. The Council considers it appropriate for the Financial Services Policy Group to be reconfigured under Member State chairmanship to give political advice and oversight on financial market issues to the ECOFIN Council. The Council is of the view that insurance sector legislation should be dealt with by the ECOFIN Council. The Council : - invites the EFC to pursue reflection on the proposal to bring together representatives of all EU parties with an interest in maintaining financial stability in a new forum. - invites the EFC to produce its report on implementation modalities by the end of September. In particular, this should: - indicate reporting mechanisms with respect to the Council and the European Parliament; - identify chairmanship and secretariat arrangements; - make proposals for allocating membership, including observer status, of the committees; and propose an indicative timetable for implementation and evaluation of the possible new arrangements. The Council invites COREPER to assess the institutional aspects with a view to providing timely guidance for its future work and paving the way for the necessary discussions with the European Parliament.

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

2001/0095(COD) - 12/09/2002 - Council position

The common position follows the Commission's proposal and incorporates a number of the amendments proposed by the European Parliament. As regards the main changes introduced by the Council relate to: - Objectives and definitions : a new definition has been introduced of the term "asset management company". Another new definition of the term "relevant competent authorities", has been introduced in order to facilitate the decision-making and making it effective and which comprises the authorities most concerned in the supervision of a financial conglomerate. The terms "group" and "close links" have been amended. The Council finds it important to include the so-called "horizontal groups" referred to in Article 12(1) of Directive 83/349, in all cases, and not leave the inclusion of these groups to national discretion. The definition of "close links" is used in the common position purely to define intra-group transactions and does not bear upon the determination of a group. The definition of the term "financial conglomerate" has been made more precise without changing the approach of the Commission proposal. For the purposes of the definition the banking and investment services sectors are considered as one sector, and a financial conglomerate must have at least one entity in this sector and one in the insurance sector, and its activities in both sectors must be significant. The term "financial sector" has also been amended to make it more precise and the definition of "close links" has been redrafted without changing the substance, in order to avoid unnecessary cross-references. - The identification of a financial conglomerate : includes those groups, not headed by an EU regulated entity, with mixed activities (industrial or commercial and financial) which have a financial interest of at least 40% as proposed by the European Parliament. The cross sectoral activities of the group must be significant. In addition to the 10% threshold for the determination of whether activities in different financial sectors are significant, the common position includes an alternative Threshold. The Council finds the figure of 3 billion proposed by the Parliament too restrictive and has fixed the threshold at EUR 6 billion. A group which meets the EUR 6 billion threshold but not the 10% threshold may, however, be excluded, either from the application of the Directive or from the provisions relating to risk concentration, intra-group transactions and internal control mechanisms, if the relevant competent authorities consider that the inclusion of that group would be inappropriate or misleading with respect to the objectives of supplementary supervision. Capital adequacy : the common position follows Parliament's amendments which introduce a clarification on co-operative structures which transfer part of the text of Annex I to the body of the Directive. The common position now explicitly states, in line with the Commission's objectives, that sectoral risks are to be covered by sectoral capital according to the sectoral rules and that any additional deficit at conglomerate level should be covered by cross-sectoral capital. - Choice of the methods for calculating a conglomerate's solvency requirement : the common position does not go as far as Parliament's wish to give financial conglomerates the fullfreedom to choose one of those methods, subject to supervisory approval. The Council considers that where a group is headed by a regulated entity, Member States should be in a position to require the calculation to be carried out according to one particular method, in particular where the sectoral rules for group-wide supervision for regulated entities in that Member State provide for a particular method and given that all methods are not equivalent under all circumstances (Annex I of the Directive explicitly provides for this). However, if a group is not headed by a regulated entity, Annex I provides that Member States shall in principle authorise the application of any of those methods. - Risk concentration : the provisions in the Common Position dealing with risk concentration and intra-group transactions have a different presentation to that proposed by the Commission. In particular, Article 6 of the Commission proposal has been split in a new Article 7 on risk concentration and a new Article 8 on intra-group transactions. The Common Position however does not depart from the Commission proposal on the substance. The Common Position also takes up the essence of Parliament's amendment which requires the Commission to evaluate and to report on

the appropriateness of Community rules on risk concentration and intra-group transactions, and by requiring the Commission to make legislative proposals if necessary; - Regarding the procedure for the appointment of a co-ordinator: the common position has reversed the procedural decision making order compared to the Commission proposal The common position provides for the automatic identification of a co-ordinator on the basis of criteria as proposed by the Commission, which may be waived subsequently by common agreement of the relevant competent authorities after consultation of the financial conglomerate. Furthermore, the Common Position provides for the appointment of a single co-ordinator, as well as for the communication of the latter's appointment to the financial conglomerate. A new provision of the Common Position explicitly provides that the coordinator, as regards information that has already been reported to another supervisor, should address itself to the latter in order to prevent duplication of reporting. - Cooperation : Article 12 of the Common Position on co-operation, by deleting a further specification on the concept of strategic policies compared to the Commission proposal, follows Parliament's amendment. The Common Position is also in line with the spirit of another of the Parliament's amendments, as the ability for supervisory authorities to waive the exchange of information has been deleted and the ability to waive consultation, although not fully deleted, is limited to well defined exceptional cases. - Financial conglomerates that are active in the EU, with a parent undertaking outside of the Community : the common position departs from the Commission proposal by replacing the procedures for the notification and objection against a co-ordinator's decision on the equivalence of a third country's regime with an obligatory consultation procedure that requires the coordinator to take into account guidance of the Financial Conglomerates Committee. - Powers conferred on the Commission in accordance with the comitology procedure: the common position follows Parliament'samendments by using a slightly different wording compared to the Commission's proposal. Furthermore, the common position complements the Commission proposal by adding supplementary competence with a view to enhance supervisory convergence regarding risk concentration and intra-group transactions. Finally, the Common Position requires the Commission to consult interested parties and to inform the public prior to submitting draft regulation. As regards the Commission proposal on the Comitology procedure, the common position accepts the amendment which aims to further clarify the Commission proposal through the introduction of two new recitals but fails to accept the amendment includes a recital referring explicitly to the 'Lamfalussy' resolution of the Parliament on the implementation of the financial services legislation. The common position follows the Parliament's amendment that proposes the introduction of a new provision according to which the procedure referred to will end after four years, subject to a possible renewal. - Amending sectoral banking, insurance and investment firm regulations : these amendments concern the elimination of multiple gearing of capital in a group. The Common Position reflects the compromise reached in the Council between those Member States, which want a more stringent and harmonised approach across financial sectors than proposed by the Commission, and those Member States, which want a less stringent approach. In general, compared to the Commission's proposal some of the thresholds that apply to the insurance sector have been raised (in principle from 10% to 20%), as well as some of the thresholds that apply to the banking and investment firms sector (in principle from 10% to 20% for holdings in insurance entities), and the different calculation methods provided by Annex I of the Directive for financial conglomerates will also be applicable to sectoral groups as regards their capital holdings in a different financial sector. Furthermore, the Common Position provides for timely initiatives to be taken by the Commission in order to bring Community legislation in this domain in line with future international agreements. In addition, new provisions introduced by the Council can be summarised as follows: - a new Article providing for an explicit procedure for the identification of a financial conglomerate, as well as for the notification of that identification. This procedure will add to the transparency of the implementation process of the Directive, both for the financial conglomerates concerned and the competent authorities involved. - another new Article provides for fit and proprietary requirements as regards the management body of mixed financial holding companies. - a new Article deals with asset management companies. The text reflects a compromise between Member States in the Council, which aims at including these institutions in the group-wide supervision of financial groups (whether sectoral groups or financial conglomerates). Obligation for the Commission to make a report Member States' practices and propose further harmonisation of EU legislation if necessary. - a new Article provides that within three years after implementation of the Directive the Commission will report on anumber of issues and on the need for further harmonisation if necessary. Other new provisions of the Common Position, which are of a more technical nature, deal with, among other things, the identification of the entity responsible for reporting risk concentration and intra-group transactions, the introduction of an explicit threshold for identifying significant intra-group transactions, a further specification of items that could be covered by the co-ordination agreement and a further clarification on which authorities may take enforcement measures.

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

2001/0095(COD) - 20/11/2002 - Text adopted by Parliament, 2nd reading

The European Parliament adopted a resolution drafted by Alain LIPIETZ (Greens/EFA, F) and approved the common position.

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

2001/0095(COD) - 14/03/2002 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted the resolution drafted by Alain LIPIETZ (Greens, France) on financial conglomerates. (Please refer to the document dated 25/03/02.) The new definition of conglomerate excludes close links and horizontal agreements. In the case of groups headed by a regulated entity or mixed financial holding company with the head office inside the EU, cross-sectoral activities are to be regarded as significant if the threshold value is below 40% but the consolidated or aggregated balance sheet total of the smallest financial sector exceeds EUR 3 billion. Several other amendments were adopted regarding the participation that can be deducted from prudential capital in the insurance sector, where no such rules were in existence. With regard to supervision, Parliament wants a single coordinator. The identity of the coordinator must be notified to the regulated entities.

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

2001/0095(COD) - 20/12/2012 - Follow-up document

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.

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

2001/0095(COD) - 20/12/2012 - Follow-up document

The Commission presents a Staff working document which accompanies the Commission’s 2012 report reviewing Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (FICOD) (*please refer to the summary dated 20/12/2012*).

It explains in more detail the analysis carried out by the Commission, building on work done in international fora, discussions with stakeholders, supervisors and Member State experts, and a vast amount of literature on lessons learnt during the crisis with respect to large, complex financial groups.

The review is guided by the objective of FICOD, which is to ensure the supplementary supervision of regulated entities that form part of a conglomerate. It aims to analyse whether the current provisions of FICOD, in conjunction with the relevant sectoral rules for group and consolidated supervision, are effective beyond the provisions introduced by FICOD1.