Procedure file

Basic information

COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2010/0232(COD)
Financial conglomerates: supplementary supervision of financial entities Amending Directive 98/78/EC 1995/0245(COD) Amending Directive 2002/87/EC 2001/0095(COD) Amending Directive 2006/48/EC 2004/0155(COD) Amending Directive 2009/138/EC 2007/0143(COD) Subject 2.50.04 Banks and credit 2.50.05 Insurance, pension funds 2.50.08 Financial services, financial reporting and auditing 2.50.10 Financial supervision	Procedure completed

Key players

European Parliament	Committee responsible	Rapporteur	Appointed
	ECON Economic and Monetary Affairs		06/09/2010
		PPE STOLOJAN Theodor Dumitru	
	Committee for opinion	Rapporteur for opinion	Appointed
	JURI Legal Affairs		27/10/2010
		PPE BODU Sebastian Valentin	
Council of the European Union	Council configuration	Meeting	Date
	Economic and Financial Affairs ECOFIN	3122	08/11/2011
	Economic and Financial Affairs ECOFIN	3045	17/11/2010
European Commission	Commission DG	Commissioner	
	Financial Stability, Financial Services and Capital Markets Union	BARNIER Michel	

Key events

16/08/2010	Legislative proposal published	COM(2010)0433	Summary
07/09/2010	Committee referral announced in Parliament, 1st reading		
17/11/2010	Debate in Council	3045	Summary
22/03/2011	Vote in committee, 1st reading		Summary
28/03/2011	Committee report tabled for plenary, 1st reading	A7-0097/2011	
04/07/2011	Debate in Parliament		
05/07/2011	Results of vote in Parliament		
05/07/2011	Decision by Parliament, 1st reading	T7-0311/2011	Summary
	Act adopted by Council after Parliament's		

08/11/2011	1st reading		
16/11/2011	Final act signed		
16/11/2011	End of procedure in Parliament		
08/12/2011	Final act published in Official Journal		

Technical information

Procedure reference	2010/0232(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 98/78/EC 1995/0245(COD) Amending Directive 2002/87/EC 2001/0095(COD) Amending Directive 2006/48/EC 2004/0155(COD) Amending Directive 2009/138/EC 2007/0143(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 053-p1
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/03565

Documentation gateway

Legislative proposal		COM(2010)0433	16/08/2010	EC	Summary
Document attached to the procedure		SEC(2010)0979	16/08/2010	EC	
Document attached to the procedure		SEC(2010)0981	16/08/2010	EC	Summary
Committee draft report		PE454.380	06/12/2010	EP	
European Central Bank: opinion, guideline, report		CON/2011/0006 OJ C 062 26.02.2011, p. 0001	28/01/2011	ECB	Summary
Amendments tabled in committee		PE456.987	03/02/2011	EP	
Committee opinion	JURI	PE454.715	01/03/2011	EP	
Committee report tabled for plenary, 1st reading/single reading		A7-0097/2011	28/03/2011	EP	
Text adopted by Parliament, 1st reading/single reading		T7-0311/2011	05/07/2011	EP	Summary
Commission response to text adopted in plenary		SP(2011)8072/2	08/09/2011	EC	
Draft final act		00039/2011/LEX	16/11/2011	CSL	

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Final act

Directive 2011/89
OJ L 326 08.12.2011, p. 0113 Summary

Final legislative act with provisions for delegated acts

Financial conglomerates: supplementary supervision of financial entities

PURPOSE: to ensure supplementary supervision of large financial conglomerates.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: about 20 years ago, financial groups with business models that combine the provision of services and products in different sectors of financial markets began to develop. These became known as financial conglomerates. Conglomerates may include banks, insurance undertakings, investment firms and possibly asset management companies.

Directive 2002/87/EC ('FICOD') introduced group-wide supplementary supervision. The objective of this supplementary supervision was to control potential risks arising from double gearing (i.e. multiple use of capital) and group risks, that is, the risks of contagion, management complexity, concentration, and conflicts of interest, which could arise when several licenses for different financial services are combined.

Whilst the banking and insurance directives aim at calculating sufficient capital buffers for the protection of customers and policyholders, FICOD, regulates the supplementary supervision of group risks. This implies that financial entities which have a mutual relationship that affects the risk profiles of both of them must be included in the supervisory scope.

In this way, FICOD supplements the sectoral directives, the Banking Directive 2006/48/EC ('CRD') and various insurance directives, all of which can be applied on a solo level, per licensed entity, and on a consolidated level, where all licensed legal entities subject to the same directive are aggregated.

A review of FICOD was envisaged some years after its implementation. The review of the FICOD effectively started in 2008 and formed the basis of this legislative proposal. Certain technical issues were included in the Commission's proposal for an Omnibus Directive in October 2009, accompanying the Regulations establishing the new European Supervisory Authorities. During the financial crisis, so-called group risks have materialized all across the financial sector, emphasising the importance of supplementary supervision of inter-linkages within financial groups and among financial institutions. Initiatives similar to the current review were undertaken in the U.S. and Australia, based on the Joint Forum's principles.

The Commission intends to proceed in two steps:

1. with the present proposal, the most urgent technical issues identified during the review, as analysed by the Joint Committee on Financial Conglomerates('JCFC'), are addressed, including the technical issues detected in earlier review exercises. Calls for advice and a consultation were issued to assess the impact of these potential changes;
2. later in 2010, a more fundamental debate will take place in the context of G20 developments regarding supplementary supervision. This debate is likely to focus on supervisory scope and capital related issues.

IMPACT ASSESSMENT: 17 policy options have been developed, assessed and compared with a view to addressing the issues identified in the analysis. Please see the summary of the Commission Staff Working Document (SEC(2010)0981) for further details. Expected impacts of the preferred policy measures concern the following: supplementary supervision on holding company level and supervisory coordination; identification of financial conglomerates; participations.

The positively assessed policy changes were expected to render the supplementary supervision framework more robust, leading to more effective risk management incentives and practices. This should be beneficial to the international competitiveness position of EU financial groups. These options should contribute positively to containing the risks to financial stability and the possible costs to society.

LEGAL BASE: Article 53(1) TFEU, which is the appropriate legal basis for the harmonisation of rules relating to financialinstitutions and financial conglomerates.

CONTENT: the aim of this legislative proposal is to amend the IGD, the FICOD and the CRD in order to eliminate unintended consequences and technical omissions in the sectoral directives and ensure that the objectives of the FICOD are effectively achieved. The main points are as follows:

Top level supervision: in orderto align supervisory powers at the top level of a conglomerate, to prevent the loss of powers when a group structure changes as well as the duplication of supervision at the conglomerate level, and to facilitate coordination by the most relevant supervisors, the following amendments were positively assessed: include top level holding companies of a banking or an insurance group that are classified as a MFHC, so that provisions and powers that are applied to the former Financial Holding Company (FHC) or Insurance Holding Company (IHC) do not disappear when the classification of a group and its holding company changes as a result of an acquisition in the other sector.

In order to ensure that all necessary supervisory tools can be applied, this proposal introduces the term 'mixed financial holding company' into the relevant provisions on consolidated/group supervision in the sectoral directives.

Identification of a conglomerate: provisions governing the identification of financial conglomerates give rise to three sub-problems: (i) the directive does not require the inclusion of 'asset management companies' in the threshold tests; (ii) the threshold tests can be based on different parameters with respect to assets and capital requirements. The provisions are ambiguous as regards the calculation of the tests; (iii) the threshold conditions, given their fixed amounts, are not risk-based, and the notion of expected group risks is not addressed by the threshold test.

In order to tackle these deficiencies, this proposal introduces the following changes:

- the draft directive proposes the inclusion of asset management companies at all times. Furthermore 'total assets under management'

is introduced as an alternative indicator and there is included the option of proving guidelines on the application of the relevant provisions;
- a waiver for smaller groups is introduced, allowing for guidelines for the application of the waiver to smaller groups;
- the text is re-worded properly to distinguish the applicable conditions for groups below and above the EUR 6 billion threshold and adds requirements as to possible guidelines for the application of the waiver to larger groups and thus ensures a level playing field.

Treatment of participations: the consistent treatment of participations in day-to-day supplementary supervision is hampered by the lack of relevant information to properly assess group risks. For example, if information about risks with respect to participations in insurance and reinsurance companies cannot be obtained by bank-led conglomerates, they cannot provide their supervisors with the evidence of a satisfactory level of integration of management and internal control with these entities that is necessary for consolidation. In that case, the group needs to deduct such participations from their capital. While the issue of information on minority participations is not yet fully examined, a first step contained in this proposal is the introduction of a waiver where participation is the only trigger for identification. As long as national company law provisions may hamper the fulfilment of requirements, specific treatment in view of risk concentration and intra group transaction requirements is allowed and may be specified via guidelines. Guidelines may also support the consistent application of supervisory review processes, including specific treatment of participations, as provided for in FICOD, CRD and Solvency II.

Other issues: the proposal deals with the following matters:

- it updates certain definitions in the directives;
- it amends the definition of relevant competent authority and supervisory coordination: certain provisions in FICOD leave room for different interpretations as regards the identification of the relevant competent authorities. An extensive interpretation results in a high number of authorities that must be consulted by the coordinator at the financial conglomerate level. This may undermine the efficient coordination of the work to be carried out by the "college" of a coordinator and relevant competent authorities;
- deletion of the third calculation method: FICOD lists three methods for calculating capital at the conglomerate level. An analysis showed that the third eligible capital calculation method always results in outcomes that are significantly different from methods 1 (consolidation) and 2 (deduction and aggregation). Therefore, the third method should be deleted. By restricting the eligible calculation methods to the consolidation and the deduction and aggregation method, FICOD is also aligned to the sectoral directives it supplements;
- inclusion of reinsurance undertakings: with the introduction of authorisation and supervision of reinsurance undertakings in Directive 2005/68/EC, reinsurance undertakings were included in the scope of regulated entities that can be part of a financial conglomerate. Consequently, a reference to reinsurance undertakings has to be included in FICOD;
- introduction of provisions regarding guidelines in certain areas: in order to allow for further convergence of supervisory practices, a possibility for the European Banking Authority and the European Insurance and Occupational Pensions Authority to issue guidelines is introduced. These guidelines should reflect the supplementary nature of this Directive. By way of example, when assessing risk concentrations on a group wide basis relating to several risk types potentially materializing throughout the group (interest rate risk, market risk, etc.), this assessment should complement the specific supervision of for example large exposures as provided for in the CRD. Guidelines may also support the consistent application of the different supervisory review processes, including specific treatment of participations, as provided for in FICOD, CRD and Solvency II.

FINANCIAL IMPLICATIONS: the proposal has no implication for the budget of the EU.

Financial conglomerates: supplementary supervision of financial entities

This commission Staff Working Document accompanies the proposal for a Directive of the European Parliament and of the Council amending Directives 98/78/EC, 2002/87/EC and 2006/48/EC as regards the supplementary supervision of financial entities in a financial conglomerate.

Directive 2002/87/EC ('FICOD') introduced group-wide supplementary supervision. The objective of this supplementary supervision was to control potential risks arising from double gearing (i.e. multiple use of capital) and group risks, that is, the risks of contagion, management complexity, concentration, and conflicts of interest, which could arise when several licenses for different financial services are combined.

Since 2002, markets have further developed in a direction where the distinction between banking business and insurance business is not always easily discernable and where the largest groups are active in many countries. As of the end of 2009, the directive covered 69 European groups and 6 third country groups.

Both the revision of the 1988 Basel Accord in 2004, implemented in the EU by the Capital Requirements Directive (CRD) in 2006, and the introduction of a comprehensive set of regulations for insurance companies in Solvency II (S2) developed the regulatory framework but, as regards conglomerates, only in so far as legal entities of a group are active in the same sector - banking or insurance. The supplementary regulatory framework under FICOD dealing with the additional complexity and risks stemming from combinations of licenses has not been evaluated yet.

Although the revision is also intended to simplify the supervision of small conglomerates, it specifically deals with the supervision of the 30 or so biggest financial groups in Europe. Total assets of these at the end 2009 exceeded ?25 trillion, representing a substantial share of the EU banking market of roughly ?42 trillion assets and the EU insurance market of roughly ?10 trillion assets.

The over-arching objective of this initiative is to ensure that the effectiveness of the supplementary supervision of large and complex groups in the EU under the FICOD is enhanced, while maintaining the competitive position of these groups

Problem definition: altogether, 17 policy options have been designed, impact-assessed and compared with a view to addressing the issues identified in the analysis:

Supervision at the holding company level: this is governed by the combination of the current provisions of the FICOD, the CRD and the Insurance Groups Directive (IGD). These directives refer to 'mixed financial holding companies' (MFHC), 'financial holding companies' (FHC) and 'insurance holding companies' (IHC), respectively. The supervisory tools that can be applied at the top level change when the top level becomes an MFHC and ceases to be a FHC or an IHC. The paper discusses how the identification of a financial conglomerate can affect the application of sectoral group supervision differently, depending on the structure of the group. As a result, certain tools of sectoral group supervision that can be applied at the level of a FHC or an IHC can not be applied to the whole group when the holding company is a MFHC.

This leads to the anomalous result that a group which has acquired a license in the other sector, so that the holding company becomes a MFHC, is subject to a regulatory regime which may not be as comprehensive as that which applied before the acquisition, even though the group has increased in size and complexity and may therefore represent a higher risk to the financial system. As a consequence, the use by supervisors of a waiver in determining whether a group is a financial conglomerate is influenced by the assessment of whether the application of the sectoral supervision may be more prudentially sound. However, the continued application of sectoral supervision may not adequately address the additional prudential risks that arise from the increased size and complexity of the group - risks which would have been addressed by the supplementary aspects of the FICOD; and may result in differences in supervisory treatment (based on the structure rather than on the risk profile) of conglomerates.

Supervisory coordination: FICOD supplements the CRD and insurance directives for additional supervision at the top level of a group. FICOD defines who is a relevant competent authority (RCA), and requires the coordinator (the top level supervisor) to consult RCAs on certain supervisory questions. However, the current provisions leave room for varying interpretations of the authorities that qualify as RCAs. A broad interpretation results in a high number of RCAs that must be consulted by the coordinator at the financial conglomerate level, which may undermine the effective and efficient coordination of the work to be carried out by the "college" of a coordinator and RCAs.

Identification: provisions governing the identification of financial conglomerate also give rise to three problems:

1. the directive does not require the inclusion of asset management companies (AMCs) in the threshold tests, because UCITS were excluded from sectoral prudential supervision in 2002, although it does require that AMCs be included in the scope of supplementary supervision;
2. the threshold tests can be based on different parameters with respect to assets and capital requirements but the provisions are ambiguous as to how calculate the tests arising from, for example, different accounting treatments of assets;
3. most importantly, the threshold conditions, given their fixed amounts, are not risk-based, and the notion of expected group risks is not addressed by the threshold test. This implies that very small groups with a few licenses in each sector are subject to supplementary supervision, while the largest most complex groups can technically be identified as not being a conglomerate. As a result, the current provisions on identification may undermine the effective achievement of the underlying objectives of the directive.

Participations: the consistent treatment of participations in day-to-day supplementary supervision is hampered by the lack of relevant information to assess group risks, which is not so straightforward when participations are held in listed firms.

Supplementary supervision on holding company level and supervisory coordination: in order to align supervisory powers at the top level of a conglomerate, to prevent both the loss of powers when a group structure changes and the duplication of supervision at the conglomerate level, and to facilitate coordination by the most relevant supervisors, the following targeted amendments will be introduced:

end the exclusion of top level holding companies of a banking or an insurance group that are classified as a MFHC, so that provisions that applied to the former FHC or IHC do not disappear when the classification of a group and its holding company changes as a result of an acquisition in the other sector;

narrow the definition of RCA to include only supervisors of ultimate parent entities within individual sectors and any other competent authorities that the supervisors of the ultimate parent entities consider are relevant.

Identification of financial conglomerates: to address the problem regarding the inclusion of AMCs in supplementary supervision, the inclusion of AMCs at all times, complemented with guidance on indicators for inclusion, will be proposed. In order to tackle the ambiguity regarding parameters and the lack of a risk-based identification of conglomerates, technical standards on the application of the "waiver option"

for larger groups of the FICOD will be proposed, and an option will be introduced to waive supplementary supervision for groups where the assets held by the smallest sector are below the absolute threshold of EUR 6 billion.

Participations: the problem of the day-to-day treatment of participations under supplementary supervision, which is aggravated by the fact that company law may prohibit a minority owner from accessing information which is not accessible to other shareholders, will be alleviated by technical standards with respect to treatment of participations in various situations.

Impact of preferred policy options: the proposed policy changes are expected to lead to more effective risk management incentives and practices which, in turn, should also help to enhance the international competitiveness position of EU financial groups. At the level of individual stakeholder groups and systemic concerns, expected impacts of the proposals are as follows:

- certain smaller EU financial groups with a simple structure and not more than a few licenses in both sectors may be excluded from supplementary supervision and would therefore benefit from savings in compliance costs. This may be available to some ten smaller financial groups with combined assets of approximately EUR 69 billion. Compliance costs for several large bank-led conglomerates that have hundreds of licenses and are active in both sectors, on the other hand, should increase as several such groups, representing up to EUR 9 trillion assets in the financial sector, may be included in the scope of the supplementary supervision. Increased compliance costs would also be incurred by those financial groups whose structure includes asset management business and that will be identified as financial conglomerates following proposed changes to the conglomerate identification process. Compliance costs for financial groups that are newly included in the scope of the supplementary supervision should, given their overall size, be immaterial in relative terms. Furthermore, they should be offset with benefits arising from more effective risk management practices, induced by incentives implicit in this legislative proposal. There will also be greater trust in the markets resulting from identification as a conglomerate. These benefits should enhance the international competitiveness of large EU groups, given initiatives in the area of supplementary supervision that are being pursued in other major international jurisdictions;
- the changes to the conglomerate identification process will make the scope of the supplementary supervision more appropriate and should therefore enhance the effectiveness of supervisors' monitoring of the risks to which financial groups are exposed. Combined with a more streamlined supervision at the top level of conglomerates and an improved supervisory toolkit for detection of contagion, concentration, complexity issues and conflicts of interests in firms connected to a conglomerate through participations, this should make a positive contribution to the financial stability;
- the enhanced clarity of provisions governing the inclusion of asset management companies in the identification and supplementary supervision should provide a more level playing field in this area;
- lastly, as regards clients of the affected financial groups, the impact is expected to be negligible given the overall level of materiality of the net incremental effect of this proposal on those groups. Moreover, clients might not be aware of differences between the regulatory treatment of banks, insurers and conglomerates: they simply trust that the supervisory framework is comprehensive and prudent, and this revision is especially aimed at reinforcing that framework and so justifying that trust.

Financial conglomerates: supplementary supervision of financial entities

The Council agreed on a general approach on a draft directive aimed at adapting the supervision of financial entities operating as a conglomerate to the new EU framework for the supervision of financial markets, pending the opinion of the European Central Bank and the position of the European Parliament.

Financial conglomerates: supplementary supervision of financial entities

OPINION OF THE EUROPEAN CENTRAL BANK on a proposal for a directive of the European Parliament and of the Council amending Directives 98/78/EC, 2002/87/EC and 2006/48/EC as regards the supplementary supervision of financial entities in a financial conglomerate.

On 30 September 2010, the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on the abovementioned proposal.

The ECB welcomes the main aim of the proposed directive, which is to ensure the appropriate scope of supplementary supervision of financial conglomerates, by closing the gaps that have evolved between the Union?s supplementary supervision regime and the sectoral directives relating to banking and insurance services.

The ECB makes the following specific observations:

Treatment of mixed financial holding companies: the ECB welcomes the references to a ?mixed financial holding company? in the provisions of the sectoral directives defining the scope of consolidated banking supervision and group insurance supervision. This will allow the application of sectoral consolidated/group supervision, in addition to supplementary supervision, of a financial holding company or an insurance holding company which, as a result of an expansion of activities to another financial sector, becomes a mixed financial holding company. The ECB considers that efficient supervisory practices should be developed, which on the one hand will allow for all relevant risks to be incorporated in the supervision, and, on the other hand, will eliminate potential overlaps in supervision and preserve a level playing field. The ECB recommends giving the European Supervisory Authorities (ESA) powers to adopt, through the Joint Committee, common guidelines in this respect.

Treatment of asset management companies: the ECB welcomes the explicit inclusion of asset management companies in the threshold tests for the identification of financial conglomerates. The ECB recommends allocating asset management companies to the sector within the financial conglomerate with which they have the closest connection, to be further specified in supervisory guidelines.

Moreover, the ECB recommends, as a consequence of the explicit inclusion of asset management companies in the supplementary supervision regime, involving the European Securities and Markets Authority, alongside the other ESA, in the development of guidelines promoting convergence of supervisory practices concerning supplementary supervision. In this respect, the wording should be similar to that contained in Directive 2010/78/EU, i.e. ?the relevant ESA, through the Joint Committee?.

Reporting formats: the ECB recommends applying harmonised formats, frequencies and dates of reporting, on the basis of implementing technical standards developed by the relevant ESA, through the Joint Committee, for the reporting of the capital adequacy requirements calculated for the relevant entities of a financial conglomerate. Such harmonisation should follow the model already in place in the banking sector, on the basis of a 2009 amendment to the Banking Directive.

Financial conglomerates: supplementary supervision of financial entities

The Committee on Economic and Monetary Affairs adopted the report drafted Theodor Dumitru STOLOJAN (EPP, RO) on the proposal for a directive of the European Parliament and of the Council amending Directives 98/78/EC, 2002/87/EC and 2006/48/EC as regards the supplementary supervision of financial entities in a financial conglomerate.

It recommended that the European Parliament?s position at first reading, under the ordinary legislative procedure, should be to amend the Commission proposal.

The main amendments are as follows:

Identification of a financial conglomerate: is necessary that financial conglomerates are identified throughout the Union according to the extent to which they are exposed to group risks, based on common guidelines issued by the European Supervisory Authority (European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA),following cooperation within the Joint Committee of the European Supervisory Authorities (Joint Committee).

Joint committee: the supplementary supervision of large, complex, internationally operating conglomerates requires coordination throughout the Union, in order to contribute to the stability of the internal market for financial services.

In order to ensure appropriate regulatory oversight, it is necessary that the legal and operational structure, including all legal entities, of banks, insurers and financial conglomerates with cross-border activities are monitored by EBA, EIOPA, and the Joint Committee as appropriate, and that information is made available to the relevant competent authorities, the Commission and the European Systemic Risk Board (ESRB) and, where appropriate, made public.

Definition and inclusion of financial holding companies: it is appropriate to ensure consistency between the aims of Directive 2002/87/EC and Directive 98/78/EC. Directive 98/78/EC should therefore be amended to define and include mixed financial holding companies. In order to ensure timely coherent supervision, Directive 98/78/EC should be amended, notwithstanding the imminent application of Directive 2009/138/EC, which should be amended to the same effect.

Alternative investment fund manager has also been added to the scope of the Directive.

Improved transparency of financial conglomerate monitoring: the name of each regulated entity which is part of a financial conglomerate shall be entered in a list, which the Joint Committee shall publish on its website and keep up to date. The Joint Committee shall also establish and regularly update a database with details on the legal and operational structure of all financial conglomerates, including all legal entities established by the financial conglomerate, to be made available to relevant competent authorities, the European Systemic Risk Board and to be published on the Joint Committee?s website.

Common guidelines: a new provision provides that the ESAs shall, through the Joint Committee, develop common guidelines on how risk-based assessments of conglomerates are to be conducted by the competent authority. Those guidelines shall, in particular, ensure that risk-based assessments include appropriate tools in order, on the one hand to assess group risks posed to the conglomerates ? including leverage and solvency ratios ? and, on the other, to guarantee full disclosure of the on and off-balance sheet exposures of conglomerates.

Stress testing: Members propose introducing stress testing at the level of each financial conglomerate. It is necessary that, in the context of Union-wide stress tests initiated by the ESAs, specific parameters for the testing of financial conglomerates are developed by the Joint Committee. In particular, stress tests should take account of liquidity and solvency risks of the conglomerates and should cover not only assets in their available-for-sale (AFS) books, but also assets held-to-maturity.

Review: Members consider that the Commission should further develop a coherent and conclusive system of supervision of financial conglomerates. The upcoming complete review of Directive 2002/87/EC should cover non-regulated entities, in particular special purpose vehicles, and should diminish the waivers available to supervisors in determining what is a financial conglomerate. The review should also include the impact on financial stability of systemically relevant financial conglomerates and providing the right incentives, as some of these may be considered "too big to fail" or "too big to supervise". Regulatory action should be considered.

Delegated acts: the Commission shall be empowered to adopt, by means of delegated acts, measures concerning the technical adaptations to be made to this Directive.

Implementation: the deadline of 1 July 2011 is too short to allow for national-level implementation of a directive, given the length of time needed for transposition. According to Members, the provisions shall apply from 31 October 2011.

Financial conglomerates: supplementary supervision of financial entities

The European Parliament adopted by 642 votes to 18, with 9 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council amending Directives 98/78/EC, 2002/87/EC and 2006/48/EC as regards the supplementary supervision of financial entities in a financial conglomerate.

Parliament adopted its position at first reading, under the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated between the European Parliament and the Council.

They amend the Commission proposal as follows:

Supplementary supervision: it is appropriate to ensure consistency between the aims of Directive 2002/87/EC on the one hand, and Council Directives 73/239/EEC (taking-up and pursuit of the business of direct insurance other than life assurance), 92/49/EEC (third non-life insurance Directive), 92/96/EEC (third life assurance Directive), and Directives 98/78/EC (supplementary supervision of insurance undertakings in an insurance group), 2002/83/EC (life insurance), 2004/39/EC (markets in financial instruments), 2005/68/EC (reinsurance), 2006/48/EC (taking up and pursuit of the business of credit institutions), 2006/49/EC (capital adequacy of investment firms and credit institutions), 2009/65/EC (undertakings for collective investment in transferable securities (UCITS)), 2009/138/EC (taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)) and 2011/61/EU (Alternative Investment Fund Managers), in order to enable appropriate supplementary supervision of insurance and banking groups, including where they are part of a mixed financial holding structure.

Identification of a financial conglomerate: is necessary that financial conglomerates are identified throughout the Union according to the extent to which they are exposed to group risks, based on common guidelines issued by the European Supervisory Authority (European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA),following cooperation within the Joint Committee of the European Supervisory Authorities (Joint Committee).

Joint committee: the supplementary supervision of large, complex, internationally operating conglomerates requires coordination throughout the Union, in order to contribute to the stability of the internal market for financial services.

In order to ensure appropriate regulatory oversight, it is necessary that the legal and operational structure, including all legal entities, of banks, insurers and financial conglomerates with cross-border activities are monitored by EBA, EIOPA, and the Joint Committee as appropriate, and that information is made available to the relevant competent authorities, the Commission and the European Systemic Risk Board (ESRB) and, where appropriate, made public.

In order to ensure effective supplementary supervision of regulated entities in a financial conglomerate, in particular where the head office of one of its subsidiaries is in a third country, the undertakings to which this Directive applies should include any undertaking, in particular a credit institution which has its registered office in a third country and which would require authorisation under that Directive if its registered office were in the Union.

The comprehensive and adequate monitoring of group risks in large, complex, internationally operating conglomerates, as well as the supervision of the group-wide capital policies of such groups, is only possible when competent authorities gather supervisory information and plan supervisory measures beyond the national scope of their mandate. It is therefore necessary that competent authorities coordinate supplementary supervision on international conglomerates among the competent authorities which are regarded as most relevant for the supplementary supervision of a conglomerate.

he colleges of financial conglomerates' relevant competent authorities should act in accordance with the supplementary nature of this Directive, and as such should not duplicate but, rather, add value to the activities of existing colleges relevant to the banking and insurance subgroups within those conglomerates, without duplicating or replacing them.

A college should be set up for a financial conglomerate only where neither a banking nor an insurance sectoral college is in place.

Definition and inclusion of financial holding companies: it is appropriate to ensure consistency between the aims of Directive 2002/87/EC and

Directive 98/78/EC. Directive 98/78/EC should therefore be amended to define and include mixed financial holding companies. In order to ensure timely coherent supervision, Directive 98/78/EC should be amended, notwithstanding the imminent application of Directive 2009/138/EC, which should be amended to the same effect.

Alternative investment fund manager has also been added to the scope of the Directive.

Improved transparency of financial conglomerate monitoring: the name of each regulated entity which is part of a financial conglomerate shall be entered in a list, which the Joint Committee shall publish on its website and keep up to date. The Joint Committee shall also establish and regularly update a database with details on the legal and operational structure of all financial conglomerates, including all legal entities established by the financial conglomerate, to be made available to relevant competent authorities, the European Systemic Risk Board and to be published on the Joint Committee?s website.

Stress testing: according to the amended text, Member States may require the coordinator to ensure appropriate and regular stress testing of financial conglomerates. They shall require the relevant competent authorities to cooperate fully with the coordinator. For the purpose of Union-wide stress tests the ESAs may, through the Joint Committee, in cooperation with the ESRB, develop supplementary parameters that capture the specific risks associated with financial conglomerates. The results of the stress test shall be communicated to the Joint Committee.

Common guidelines: a new provision provides that the ESAs shall, through the Joint Committee, develop common guidelines on how risk-based assessments of conglomerates are to be conducted by the competent authority. Those guidelines shall, in particular, ensure that risk-based assessments include appropriate tools in order, to assess group risks posed to the conglomerates.

The ESAs shall, through the Joint Committee, issue common guidelines aimed at developing supervisory practices allowing for supplementary supervision of mixed financial holding companies to appropriately complement the group supervision under Directive 98/78/EC and Directive 2009/138/EC or, as appropriate, consolidated supervision under Directive 2006/48/EC. Those guidelines shall allow all relevant risks to be incorporated in the supervision, while eliminating potential supervisory and prudential overlaps.

Convergence of equivalence assessments: to avoid an overlap between those provisions and to ensure the effectiveness of top-level supervision, supervisors should be able to apply a particular provision only once, while complying with the equivalent provision in all applicable directives. To this end, the ESAs, through the Joint Committee, should develop guidelines aimed at the convergence of equivalence assessments and work towards issuing binding technical standards.

Delegated acts: the Commission shall be empowered to adopt, by means of delegated acts, measures concerning the technical adaptations to be made to this Directive.

Review: the Commission shall fully review Directive 2002/87/EC, including the delegated and implementing acts adopted pursuant thereto. Following that review, the Commission shall send a report to the European Parliament and to the Council, by 31 December 2012, addressing, in particular, the scope of the directive, including whether the scope should be extended and the application of the directive to non-regulated entities, in particular special purpose vehicles.

The report shall also cover the identification criteria of financial conglomerates owned by wider non-financial groups, whose total activities in the banking sector, insurance sector and investment services sector are materially relevant in the internal market for financial services.

The Commission should also consider whether the ESAs shall, through the Joint Committee, issue guidelines for the assessment of this material relevance. In the same context, the report shall cover systemically relevant financial conglomerates, whose size, inter-connectedness or complexity make them particularly vulnerable, and which are to be identified in analogy with the evolving standards of the Financial Stability Board and the Basel Committee on Banking Supervision. In addition, that report shall review the possibility to introduce mandatory stress testing. The report shall be followed, if necessary, by appropriate legislative proposals.

Transposition: the amending Directive should be transposed into national law from 1 January 2013 (date of application of Solvency II) or 18 months after the date of the date of entry into force of this Directive, whichever the later or at the latest 22 July 2013 according to certain provisions.

Financial conglomerates: supplementary supervision of financial entities

PURPOSE: to improve the supplementary supervision of financial entities in a financial conglomerate.

LEGISLATIVE ACT: Directive 2011/89/EU of the European Parliament and of the Council amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate.

CONTENT: following agreement with the European Parliament in first reading, the Council adopted a directive amending the financial conglomerate directive in order to close loopholes and ensure appropriate supplementary supervision of entities in a financial conglomerate.

The new directive also adapts the supervision of financial conglomerates to the EUs new supervisory structure.

Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (the Financial Conglomerate Directive) gave national financial supervisors additional powers and tools to watch over conglomerates and apply supplementary supervision on them, in addition to specific banking and insurance supervision.

These groups are exposed to group risks that include: (i) the risks of contagion where risks spread from one end of the group to another; (ii) risk concentration, where the same type of risk materialises in various parts of the group at the same time; (iii) the complexity of managing many different legal entities; (iv) potential conflicts of interest; and (v) the challenge of allocating regulatory capital to all the regulated entities which are part of the financial conglomerate, thereby avoiding the multiple use of capital.

Financial conglomerates should therefore be subject to supervision supplementary to supervision on a stand alone, consolidated or group basis, without duplicating or affecting the group and regardless of the legal structure of the group.

The revision of the Financial Conglomerates Directive amends the relevant legislation on banking and insurance supervision, namely the Capital Requirements Directive (2006/48/EC and 2006/49/EC) and the Directive on supplementary supervision of insurance undertakings in insurance groups (98/78/EC).

A financial conglomerate is a group that combines different types of regulated financial firms (bank, securities firm, insurance company) and is therefore exposed to two or more sector-based regulatory regimes.

The amendments to the Financial Conglomerates Directive include the following:

- the inclusion of asset management companies in the threshold tests for identifying a conglomerate;
- a waiver for smaller groups if the relevant supervisor assesses the group risks to be negligible;
- allowing for risk-based assessments, in addition to existing definitions relating to size, in identifying financial conglomerates. Financial conglomerates must be identified throughout the Union according to the extent to which they are exposed to group risks, on the basis of common guidelines to be issued by the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA), through the Joint Committee of the European Supervisory Authorities;
- allowing for both sector-specific (banking and insurance) supervision and supplementary supervision of the conglomerate's parent entity, also if it concerns a holding company. Under the current rules, supervisors have to choose which supervision they apply when a group acquires a significant stake in another sector and when the parent entity is a holding company;
- improved transparency: the name of each regulated entity which is part of a financial conglomerate shall be entered in a list, which the Joint Committee shall publish on its website and keep up to date;
- stress testing: Member States may require the coordinator to ensure appropriate and regular stress testing of financial conglomerates;
- common guidelines: the ESAs shall, through the Joint Committee, develop (i) common guidelines on how risk-based assessments of conglomerates are to be conducted by the competent authority; (ii) common guidelines aimed at developing supervisory practices allowing for supplementary supervision of mixed financial holding companies.

Review: the Commission shall fully review Directive 2002/87/EC, including the delegated and implementing acts adopted pursuant thereto. Following that review, the Commission shall send a report by 31 December 2012, addressing, in particular, the scope of that Directive, including whether the scope should be extended, and the application of that Directive to non-regulated entities, in particular special purpose vehicles.

The report shall also cover the identification criteria of financial conglomerates owned by wider non-financial groups, whose total activities in the banking sector, insurance sector and investment services sector are materially relevant in the internal market for financial services.

In the same context, the report shall cover systemically relevant financial conglomerates, whose size, inter-connectedness or complexity make them particularly vulnerable, and which are to be identified by analogy with the evolving standards of the Financial Stability Board and the Basel Committee on Banking Supervision. In addition, that report shall review the possibility of introducing mandatory stress testing. The report shall be followed, if necessary, by appropriate legislative proposals.

ENTRY INTO FORCE: 09/12/2011.

TRANSPOSITION: 10/06/2013.

DELEGATED ACTS: the Commission has the power to adopt delegated acts regarding technical changes to the Directive. The delegation of power is conferred on the Commission for a period of four years from 9 December 2011 (tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension.)

A delegated act only if no objection has been expressed either by the European Parliament or the Council within a period of three months of the notification (extended by three months at the initiative of the European Parliament or the Council.) The delegated act will not enter into force if the European Parliament or Council objects.