EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
Ares(2017)

Opinion

Title: Evaluation / Financial Conglomerates Directive (FICOD)

Overall opinion: NEGATIVE

(A) Context

Banks, insurers and securities firms face different regulatory structures. One firm may be active in more than one market, falling under different regulators. Such a firm is known as a financial conglomerate. Financial conglomerates pose a challenge for regulators. Particular risks reportedly come into play if conglomerates are both large and active in differently regulated sectors, and operate across borders.

The Financial Conglomerates Directive (FICOD) seeks to address these risks. It defines financial conglomerates, designates a primary regulator and contains several provisions to improve oversight. FICOD originally passed in 2002 but was amended in 2011[1] in the wake of the global financial crisis. FICOD works in combination with sectoral prudential regulation, notably CRDIV/CRR and Solvency II. This other prudential regulation has also evolved in recent years.

This report concerns a REFIT evaluation of FICOD.

(B) Main considerations

The Board notes that the scope of this evaluation is limited to FICOD and two delegated regulations. It thus only covers a part of the supervisory framework for large conglomerates that may be too big or too complex to fail.

The Board gives a negative opinion as it considers that the report contains important shortcomings that need to be addressed particularly with respect to the following issues.

(1) The limited scope of the evaluation does not allow for an assessment of whether the current framework for supervision of conglomerates is adequate.

(2) The report does not properly assess 'group risks' in financial conglomerates. It provides little information on their magnitudes or their evolution over time in view of developments in markets and the regulatory framework. It does not explain to what

[1] Directive 2011/89/EU of the European Parliament and of the Council 16 November 2011 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, (OJ L 326, 8.12.2011, p. 113).

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extent these group risks are being addressed by sectoral regulations as opposed to FICOD.

(3) The evidence base of the report is weak, resulting in conclusions that are overly tentative. There was not enough effort to collect data beyond the public consultation. In particular, the report does not contain up-to-date calculations of costs of FICOD for supervisors and conglomerates, and can therefore not assess potential for simplification as REFIT requires.

(4) The report does not provide a basis for a possible future review of the Directive, which would require further data collection.

(C) Further considerations and adjustment requirements

(1) The scope is a particular challenge in this evaluation. Risks relating to financial conglomerates are regulated by a broader supervisory framework that includes sectoral regulations as well as FICOD. However, the evaluation only addresses FICOD and two delegated regulations. As a consequence, the report is unable to say whether the framework for mixed-activity financial conglomerates is sound, effective and efficient.

With regard to sectoral legislation, including Solvency II and CRR/CRD, the report focuses on administrative, legal and procedural issues for the interaction of FICOD with main sectoral regulations and is unable to shed light on the economic and prudential effectiveness of the intervention(s) as such.

(2) The point of FICOD is to address 'group risks' in financial conglomerates. The report should contain an evidence-based discussion of their magnitudes and their evolution over time, in view of market trends as well as changes in the regulatory framework. The analysis should supplement available data with illustrative examples. It should better explore to what extent these group risks are addressed by the sectoral regulation and by FICOD, and in this way discuss the value added of FICOD.

(3) The evaluation is a REFIT exercise. This implies a special effort to look at the extent to which FICOD is 'fit for purpose' and to assess the scope for removing burdens, inconsistencies or redundant rules. The report should do more to address this potential. It should better identify and quantify costs.

The Board understands that a study on the costs of reporting is going to follow up the Call for Evidence covering a number of financial regulations, including FICOD. A REFIT exercise should include this type of evidence. The report should also identify cost implications for stakeholders and supervisors of possible revisions and simplifications to various parts of the regulatory framework.

(4) The report should more clearly identify the views of stakeholders, including by group, on the identified topics of the directive. It should also more clearly present supervisors' views.

(5) The report should explain why the evaluation has no baseline.

(6) The report should include relevant material from the Call for Evidence concerning FICOD and discuss, in light of its conclusions, the REFIT platform opinion on FICOD.

(7) Conclusions should be sufficiently clear statements to guide policy makers, with necessary caveats to indicate the limits to the guidance that the limited evidence can provide.

<u>(D) RSB scrutiny process</u>

The lead DG is advised to reconsider the case for issuing this report in its present form and, in any case, not to proceed with launching the interservice consultation before substantially amending and complementing the report, so as to mitigate the above-mentioned shortcomings.

The lead DG may decide to resubmit this report to the Board, in which case the report should be adjusted in accordance with the above-mentioned requirements prior to its resubmission.

Full title	REFIT evaluation of Directive 2002/87/EU on the supplementary supervision of credit institutions, insurance undertakings and investments firms in a financial conglomerate
Reference number	2016/FISMA/073
Date of RSB meeting	15/2/2017