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COMMISSION STAFF WORKING DOCUMENT

Summary of Commission Staff Working Document on Directive 2002/87/EU on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (FICOD)

{SWD(2017) 272 final}

1 Executive summary

Introduction

The purpose of this Staff Working Document is to assess the effectiveness, efficiency, coherence, relevance and EU-added value of initiatives. This analysis covers the original FICOD (Directive 2002/87/EU) and the amending Directive (2011/89/EU "FICOD1"). This analysis also covers the two Delegated Regulations (DR) adopted to support the application of the FICOD rules - the DR on the uniform conditions of application of the calculation methods for determining the amount of capital required at the level of the financial conglomerate (Commission Delegated Regulation (EU) No 342/2014 of 21 January 2014) and the DR on risk concentration and intra-group transactions (Commission Delegated Regulation (EU) 2015/2303 of 28 July 2015).

This Staff Working Document sets out the Commission Services' analysis of FICOD and draws conclusions on the continued fitness of FICOD in achieving its objectives.

Background

Financial conglomerates are large groups with significant activities in more than one financial sector (banking, investment, insurance). They tend to be complex in structure, operate across borders and the wider group can contain unregulated entities (from a financial legislation perspective) and also entities not involved in financial services.

FICOD was developed to address the lack of a specific prudential treatment for these mixed-activity groups. At the time, the different sectorial parts of the group were subject to their own prudential treatments under the sectorial regimes. The aim of FICOD was to develop a regime to ensure the financial stability of these groups, in order to prevent harm to the wider economy and to ensure that individual depositors and policy holders were not impacted by the failure of these groups. FICOD aimed to ensure this by developing a sound supervisory framework for the supervision of these groups, which addressed the specific prudential risks arising in these groups and also addressed any loopholes in the sectorial regimes.

FICOD sets out specific provisions for groups identified as financial conglomerates; including requiring a capital adequacy calculation at financial conglomerate level; reporting on intra-group transaction and risk concentrations; and imposing governance requirements at the level of the financial conglomerate. It also sets out a framework for supervisory cooperation between competent authorities involved in the supervision of a financial conglomerate.

FICOD was originally adopted in December 2002. However, the global financial crisis revealed that financial sector regulation did not keep up with changes and challenges in the market place. An amended FICOD was adopted in November 2011¹. The amended FICOD was adopted as a "quick-fix" directive which addressed some identified gaps in the legislation. In light of the fact that this Directive was a "quick fix" the amended FICOD also

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).

required the Commission to deliver a report before 31 December 2012 assessing the effectiveness of FICOD, followed by a legislative proposal if deemed necessary. The Commission published a report in December 2012 (the 2012 Report)² which highlighted a number of areas in which FICOD could be improved, but any review of the legislation was put on hold pending the conclusion of negotiations on the sectorial regimes (namely CRDIV/CRR and Solvency II) on which FICOD builds.

Findings

This Staff Working Document outlines the Commission Services' analysis of FICOD. It highlights a number of ways in which the effectiveness, efficiency, relevance, coherence and EU added value of FICOD has evolved and changed since its adoption in 2002. A first conclusion of this report is that it remains important to keep in place a framework for the supervision of mixed-activity financial groups, a framework that is provided by FICOD. FICOD has, in general, functioned well and there is no evidence of failures of financial institutions which could have been perceived as due to the weaknesses in FICOD provisions. The message received from the consultation – particularly from supervisory authorities – is that the consideration of group risks is still an important part of ensuring financial stability and investor protection.

Since the adoption of the original FICOD in 2002, the regulatory landscape in which Financial Conglomerates operate has changed significantly. The development of enhanced sectorial regimes, and in particular the enhanced group supervision regime under Solvency II, has changed the relevance and application of FICOD, leading to a certain number of inconsistencies. However, the framework still functions to capture group risks and gives supervisors oversight over these cross-sector groups. In some instances the gaps and inconsistencies are addressed by supervisors in the application of the FICOD framework and therefore do not fundamentally undermine the effectiveness of the FICOD framework.

Overall, FICOD remains a useful supervisory tool.

² The Report on the review of the Directive 2002/87/EC of the European Parliament and the Council on the supplementary supervision of credit institutions, insurance undertakings and investments firms in a financial conglomerate from the Commission to the European Parliament and the Council, COM(2012) 785 final 20.12.2012.