Financial markets: banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management

2008/0191(COD) - 06/05/2009 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 454 votes to 106, with 25 abstentions, a legislative resolution amending, under the first reading of the codecision procedure, the proposal for a directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management.

The resolution stresses that the crisis in international financial markets has demonstrated that it is appropriate to examine further the need for a reform of the regulatory and supervisory model of the EU financial sector. It has also revealed a need for better analysis of and response to macro-prudential problems - problems which lie at the interface between macro-economic policy and financial system regulation.

The amendments adopted in plenary are the result of a compromise negotiated with the Council.

The main amendments are as follows:

Calculation and reporting requirements: for the communication of these calculations by credit institutions, competent authorities shall apply, by 31 December 2012, **uniform formats, frequencies and dates of reporting**. To facilitate this, the Committee of European Banking Supervisors shall elaborate guidelines to introduce, within the Community, a uniform reporting format at the latest by 1 January 2012. The reporting formats shall be proportionate to the nature, scale and complexity of the credit institutions' activities.

More transparency in the event of high exposure: the text provides that a credit institution may not incur an exposure to a client or group of connected clients the value of which exceeds 25% of its own funds. Where that client is an institution or where a group of connected clients includes one or more institutions, this value may not exceed 25% of the credit institution's own funds or the amount of EUR 150 million, whichever is higher.

The compromise adds that where the amount of EUR 150 million is higher than 25% of the credit institution's own funds, the value of the exposure shall not exceed a reasonable limit in terms of the credit institution's own funds. This limit shall be determined by credit institutions to address and control concentration risk, and shall not be higher than 100% of the credit institution's own funds.

Securitisation: under the compromise, a credit institution, other than when acting as an originator, a sponsor or original lender, shall only be exposed to the credit risk of a securitisation position in its trading book or non-trading book if the originator, sponsor or original lender has explicitly disclosed to the credit institution that it will retain, on an ongoing basis, a material net economic interest which, in any event **shall not be less than 5%**.

The text clarifies the meaning of retention of **net economic interest**. This shall be measured at the origination and shall be maintained on an on-going basis. It shall not be subject to any credit risk mitigation or any short positions or any other hedge. The net economic interest shall be determined by the notional value for off-balance sheet items.

Credit institutions shall **regularly perform their own stress tests** appropriate to their securitisation positions. To this end, credit institutions may rely on financial models developed by an External Credit Assessment Institution (ECAI) provided that credit institutions can demonstrate, when requested, that they took due care prior to investing to validate the relevant assumptions in and structuring of the models and to understand methodology, assumptions and results.

Credit institutions shall have a **thorough understanding of all structural features of a securitisation transaction** that would materially impact the performance of their exposures to the transaction such as the contractual waterfall and waterfall related triggers, credit enhancements, liquidity enhancements, market value triggers, and deal-specific definition of default.

The Committee of European Banking Supervisors shall elaborate **guidelines for the convergence of supervisory practices**, including the measures taken in case of breach of the due diligence and risk management obligations.

Developing current supervisory arrangements: colleges of supervisors are a further and important step forward in streamlining EU supervisory cooperation and convergence. Cooperation between supervisory authorities, dealing with groups and holdings and their subsidiaries and branches, in colleges is a phase in a development towards further regulatory convergence and supervisory integration.

Trust between supervisors and respect for their respective responsibilities is essential. In the event of a conflict between members of a college linked to those different responsibilities, neutral and independent advice, mediation and conflict resolving mechanisms at Community level are essential.

Report: the Commission should report to the European Parliament and the Council and propose appropriate legislation needed to tackle the shortcomings identified regarding the provisions related to further supervisory integration at the latest by **31 December 2009**, having in mind that a stronger role for an EU level supervisory system should be achieved at the latest by 31 December 2011.

The Commission shall review, inter alia: (i) the need for further reform of the supervisory system; (ii) the progress made by the Committee of European Banking Supervisors towards uniform formats, frequencies and dates of reporting; (iii) the application of the provisions of the Directive to microcredit finance; (iv) whether exemptions should be a matter of national discretion; (v) measures to enhance transparency of OTC markets, including the credit-default swap (CDS) markets, such as by clearing through central counterparties (CCPs).

By 1 January 2012, the Commission shall report to the European Parliament and the Council on the application and effectiveness of Article 122a (securitisation) in the light of international market developments.

Transposition: Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 October 2010 at the latest and shall apply those provisions from 31 December 2010.