European Supervisory Authorities: powers of the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority

2011/0006(COD) - 19/01/2011 - Legislative proposal

PURPOSE: to improve the functioning of the internal market by means of ensuring a high, effective and consistent level of prudential regulation and supervision, protecting policy holders and beneficiaries and thereby businesses and consumers, protecting the integrity, efficiency and orderly functioning of financial markets, maintaining the stability of the financial system, and strengthening international supervisory coordination.

BACKGROUND: experience of the financial crisis has exposed important failures in financial supervision. President Barroso therefore requested a group of high level experts, chaired by Jacques de Larosière, to make proposals to strengthen European supervisory arrangements.

Building on its recommendations, the Commission set out proposals for a new European financial supervisory architecture in its Communication to the Spring European Council of March 2009. The Commission presented its ideas in more detail in its Communication of May 2009 which proposed:

- establishing a European System of Financial Supervisors (ESFS), consisting of a network of national financial supervisors working in tandem with new European Supervisory Authorities (ESAs): a European Banking Authority (EBA), a European Insurance and Occupational Pensions Authority (EIOPA), and a European Securities and Markets Authority (ESMA); and
- establishing a European Systemic Risk Board (ESRB), to monitor and assess potential threats to financial stability that arise from macro-economic developments and from developments within the financial system as a whole.

The Communication also concluded that in order for the ESFS to work effectively, changes to the financial services legislation would be necessary, in particular to provide an appropriate scope to the more general powers provided for in the individual regulations establishing the authorities, ensuring a more harmonised set of financial rules through the possibility to develop draft technical standards and facilitate the sharing, where necessary, of microprudential information.

IMPACT ASSESSMENT: the May Commission Communication on Financial Supervision in Europe was accompanied by an impact assessment analysing the main policy options for establishing the ESFS and ESRB. A second impact assessment accompanied the legislative proposals, examining the options in more detail. The second impact assessment analysed the options for the appropriate powers for the authorities to work towards achieving a single set of harmonised rules and concluded that this capacity would be rightly limited to those areas to be defined in forthcoming sectoral legislation, and identified such potential areas. Additionally, in developing the draft technical standards themselves, the authorities should undertake appropriate analysis of potential related costs and benefits and consult stakeholders before submitting them to the Commission.

LEGAL BASIS: given that changes need to be introduced into existing Directives to ensure the development of a single rule book, an amending Directive is the most appropriate instrument. This amending Directive should have the same legal basis as the Directives it amends, i.e. Articles 50, 53, 62, and 114 of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: along with the Regulations establishing the EBA, EIOPA and ESMA and in order for the ESFS to work effectively, changes to the sectoral legislation are necessary. The areas in which amendments are proposed fall broadly into the following categories:

- definition of the appropriate scope of technical standards as an additional tool for supervisory convergence and with a view of developing a single rule book;
- to appropriately integrate the possibility for the authorities to settle disagreements in a balanced way to those areas where common decision making processes already exist in sectoral legislation;
- general amendments which are common to most sectoral legislation and necessary for the directives to operate in the context of new authorities, for example, renaming the level 3 committees to the new authorities and ensuring the appropriate gateways for the exchange of information are present; and
- additional amendments to the Solvency II Directive.

This amending directive is proposed to amend the following legislation: i) Directive 2003/71/EC: Prospectus Directive and ii) Directive 2009/138/EC (the Solvency II Directive).

The changes to be made to the Solvency II Directive aim to:

- to adjust existing level 2 empowerments to the Lisbon Treaty: existing level 2 empowerments should be transformed into empowerments for delegated acts. Appropriate control procedures should be foreseen;
- provide for transitional requirements in relation to valuation, governance, supervisory reporting and public disclosure, the determination and classification of own funds, the standard formula for the calculation of the Solvency Capital Requirement and the choice of methods and assumptions for the calculation of technical provisions, including the determination of the relevant risk-free interest rate term structure. It is also necessary to enable level 2 measures to specify transitional arrangements in relation to the treatment of third country regimes. The transitional requirements should not result in more favourable treatment for insurance and reinsurance undertakings, or lower protection for policy holders. They should encourage undertakings to move towards compliance with the particular requirements of the new regime as soon as possible;
- amend level 2 empowerments: in order to allow for greater convergence on procedures for supervisory approvals already provided for in Solvency II (specific parameters, model change policies, special purpose vehicles and the setting and removal of capital add-ons), the Commission should be empowered to adopt measures by means of delegated acts specifying procedure in these areas;
- include the European Cooperative Society (SCE) in the list of permissible forms of insurance and reinsurance undertakings;
- introduce an amendment to reflect the adaptation to the Euro amount of the MCR floor for captive reinsurance undertakings;
- Extend by two months the implementation date in order to better align the start of the various new reporting, calculation and other obligations of the Solvency II regime with the date (31 December) which marks the end of the financial year of the majority of insurance undertakings.

BUDGETARY IMPACT: the proposal has no implication for the European Union’s budget.