

Financial supervision: powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority

2009/0161(COD) - 26/10/2009 - Legislative proposal

PURPOSE: to complement the package of proposals on financial supervision presented by the Commission on 23 September 2009, with a view to strengthening financial supervision in Europe.

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

BACKGROUND: experience of the financial crisis has exposed important failures in financial supervision, both in particular cases and in relation to the financial system as a whole. On the basis of recommendations of a group of high-level experts, chaired by Mr Jacques de Larosière, the Commission set out proposals for a new European financial supervisory architecture in its Communication to the Spring European Council of March 2009 ([COM\(2009\)0114](#)). The Commission presented its ideas in more detail in its Communication of May 2009 ([COM\(2009\)0252](#)) in which it 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), created by transforming the existing European supervisory committees into 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. To this end, the ESRB would provide an early warning of system-wide risks that may be building up and, where necessary, issue recommendations for action to deal with these risks.

On 23 September 2009, the Commission adopted:

- a proposal for a Regulation establishing a [European Banking Authority](#),
- a proposal for a Regulation establishing a [European Insurance and Occupational Pensions Authority](#), and
- a proposal for a Regulation establishing a [European Securities and Markets Authority](#).

The May 2009 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 micro-prudential 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 accompanies these proposals, examining the options in more detail. The second impact assessment analysed the options for the appropriate powers for the Authority 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.

CONTENT: having proposed a battery of legislative measures designed to beef up financial supervision in Europe, in particular by the creation of a European System of Financial Supervisors and three new European supervisory authorities, the Commission is proposing that certain changes are made to existing legislation on financial services to allow the new authorities to work effectively. 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;
- the possibility for the authority to **settle disagreements** in a balanced way to those areas where common decision making processes already exist in sectoral legislation; and
- **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. It is also proposed that the ESAs will be given the duty to establish, publish and regularly update registers and lists of financial actors in the Community and other important issues, which is currently the duty of each national competent authority.

This amending directive is proposed with a view to amending sectoral directives concerning: capital requirements; financial conglomerates; institutions for occupational retirement provisions; market abuse; markets in financial instruments; prospectuses; settlement finality, transparency, anti-money laundering and undertakings for collective investments in transferable securities (UCITS).

Moreover, where appropriate, the Commission will make further proposals for amendments to the [Solvency II Directive](#), which is currently being finalised, after publication of the Directive.

In addition to the areas identified in this proposed Directive, the Commission is considering further whether additional empowerments for technical standards should be made in some areas – in particular, **securities**. These further amendments would concern, in particular, Directives 2003/6/EC, 2003/71/EC and 2004/39/EC and could form a second Omnibus Directive, along with proposals for amendments to the Solvency II Directive.

BUDGETARY IMPLICATIONS: the proposal has no implication for the Community budget.