

European Insurance and Occupational Pensions Authority (EIOPA): establishment

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The Committee on Economic and Monetary Affairs adopted the report drawn up by Peter SKINNER (S&D, UK) on the proposal for a regulation of the European Parliament and of the Council establishing a European Insurance and Occupational Pensions Authority. It recommended that the European Parliament's position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure) should be to amend the Commission proposal as follows:

Scope of action: a new clause clarifies that the Authority shall act in the field of activities covered by the legislation referred to in the text, including matters relating to shareholder rights, corporate governance, auditing, and financial reporting, in order to ensure the effective and consistent application of the legislative acts referred to in the text. The Authority shall also take appropriate action in the context of takeover bids, clearing and settlement issues, securitisation, short selling and derivative issues including standardization.

The committee added to the Authority's objectives, stressing, inter alia, the prevention of regulatory arbitrage, precluding the generation of future credit bubbles from the Union's financial institutions; and developing common methodologies for assessing the effect of product characteristics and distribution processes on the financial position of institutions and on customer protection.

The European System of Financial Supervision: a new clause sets out the bodies that will comprise the ESFS. It states that the Authorities forming part of the ESFS, including the competent authorities of the Member States, shall be accountable to the European Parliament without prejudice to their accountability of Member States' competent authorities to national parliaments. The Authority shall cooperate regularly and closely, ensure cross-sectoral consistency of work and arrive at joint positions in the area of supervision of financial conglomerates and on other cross-sectoral issues with the European Systemic Risk Board as well as with the European Supervisory Authority (Banking) and the European Supervisory Authority (Securities and Markets) through the Joint Committee.

Tasks: the committee considerably expanded the list of the Authority's tasks, and added, inter alia, that it must act as the competent body to manage crisis of cross border institutions that have the potential to pose a systemic risk, leading and executing all early interventions, resolution or insolvency procedures for such institutions through its Resolution Unit. It must also:

- provide a database of registered financial institutions in the area of its competence;
- develop draft implementing standards in the specific cases referred to in the new text;
- collect directly the necessary information concerning financial institutions;
- develop a regulatory standard setting out the minimum information to be made available to the Authority about transactions and market participants and how the coordination of collection is to be carried out and how existing national databases are to be linked in order to ensure that the Authority is always able to access the relevant and necessary information concerning transactions and market participants within its competence.

Powers of the competent authorities that are members of the Authority: a new provision states that competent authorities that are members of the Authority, shall certain have powers to adopt preventative and correcting supervisory measure. These are set out in the text and include the **power to temporarily restrict or forbid certain products or types of transactions** that may directly or indirectly cause

excessive volatility in the markets or perturb all or part of the financial system in the Union, public finances or the real economy.

Regulatory standards: the Commission should endorse draft regulatory standards in order to give them binding legal effect. They should be subject to amendment if, for example, they are incompatible with Union law, do not respect the principle of proportionality or run counter to the fundamental principles of the internal market for financial services as reflected in the Union financial services law. To ensure a smooth and expeditious adoption process for those standards, the Commission should be subject to a time limit for its decision on the endorsement.

Implementing standards: the Authority may develop draft standards to implement legally binding Union acts in the areas specifically set out in the regulation and in the legislative acts referred to in the text. It shall conduct open public consultations on implementing standards as well as on guidelines and recommendations.

Action in emergency situations: the ESRB, upon its own initiative or following a request by the Authority, the Council, the European Parliament or the Commission, may issue a warning declaring the existence of an emergency situation in order to **enable the Authority without further requirements to adopt individual decisions**. Where the addressee of the decision refuses to comply with Union law or a specific decision taken by the Authority, the Authority may issue proceedings in the national courts, including applications for interim relief.

Settlement of disagreements between competent authorities across sectors: a new clause states that Joint Committee shall settle disagreements that may arise between competent authorities.

Colleges of supervisors: the report states that the Authority shall pay special attention to and address risks of disruption in financial services that (i) is caused by an impairment of all or parts of the financial system and (ii) has the potential to have serious negative consequences for internal market and the real economy (systemic risk). All types of financial intermediaries, markets and infrastructure can potentially be systematically important to some degree. The Authority, in collaboration with the European Systemic Risk Board, shall develop a common set of quantitative and qualitative indicators (risk dashboard) which will serve as the basis to assign a supervisory rating to cross border institutions that potentially could pose a systemic risk. That rating shall be reviewed on a regular basis, to take into account material changes of the risk profile of an institution. The supervisory rating shall be a critical element for the decision to directly supervise or intervene in an ailing institution. The Authority shall **exert supervision of cross-border institutions that may pose a systemic risk**. In those cases, the Authority shall act through the competent national authorities. The Authority shall establish a Resolution Unit with a mandate to put in practice the clearly defined governance and modus operandi of crisis management from early intervention to resolution and insolvency and lead such procedures. All financial institutions identified as potentially posing a systemic risk must take part in the European Guarantee Scheme as well as in the European Stability Fund. Financial institutions operating in a single Member State shall have the option to join the European Guarantee Scheme or the European Stability Fund. The contributions made to the European Funds shall replace those made to national funds of a similar nature.

Members recommend new tasks for the college, including initiating and coordinating **European Union-wide stress tests** to assess the resilience of financial institutions to adverse market developments, ensuring an as consistent as possible methodology is applied at the national level to such tests. The Authority shall lead the colleges of supervisors and not merely participate as an observer.

The Authority may issue regulatory and implementing standards, guidelines and recommendations to harmonise supervisory functioning and best practices adopted by the colleges of supervisors. Furthermore,

a **legally binding mediation role** should allow the Authority to solve disputes between competent authorities. Where no agreement can be reached within the relevant college of supervisors, the Authority may take supervisory decisions directly applicable to the institutions concerned.

The committee goes on to insert new clauses **on identification of systemic institutions that potentially could pose a systemic risk**, the establishment of a **resolution unit** and a clause on the **European Framework of Insurance Guarantee Schemes**. It added that no bilateral agreements concerning delegation shall be entered into concerning those institutions that are identified as potentially posing a systemic risk.

Resolution Unit: the Resolution Unit shall preserve financial stability and minimise the contagion effect of the ailment of the institutions identified as potentially posing a risk to the rest of the system and the economy at large and limit the cost to taxpayers respecting the principle of proportionality, creditors' hierarchy and guaranteeing equal treatment across borders.

European Framework of Insurance Guarantee Schemes: the Scheme shall be established in order to ensure the co-responsibility of insurance institutions on the protection of European policy holders interests and to minimise the cost for the taxpayers. It shall be financed through contributions from all financial institutions identified as systemic institutions that potentially could pose a systemic risk. The contribution to the Scheme shall be determined by, inter alia, the risk exposure of the financial institution.

European Insurance and Occupational Pensions Stability Fund: this Fund is established in order to strengthen the internalisation of the costs of the financial system, including the full recovery of fiscal costs, and to assist in crisis resolution for failing cross-border financial institutions. Financial institutions operating in only one Member State shall have the option to join the fund. The Stability Fund shall adopt appropriate measures to avoid that the availability of aid generates a moral hazard. It is also financed through direct contributions from all financial institutions identified as potentially posing a systemic risk.

International relations: Members want the Authority to represent the Union in all international forums concerning the regulation and supervision of the institutions falling within its scope.

Insurance and Reinsurance Stakeholder Group and Occupational Pensions Stakeholder Group: the Stakeholder Groups shall be consulted on all relevant decisions and actions of the Authority. If actions must urgently be taken and consultation becomes impossible the Stakeholder Groups shall be informed as soon as possible. They will meet at least four times per year.

Not less than 5 of the members shall be independent top-ranking academics. The number of members representing financial institutions shall not exceed 10. Adequate compensation shall be established for members of the Stakeholder Groups representing non-profit organisations.

Safeguards: the provisions of the report are **more stringent than those in the proposal**. The committee deleted the clause which stated that the Authority shall ensure that no decision adopted under the provisions on actions on emergency situations (Article 10) or on settlement of disagreements between national supervisory authorities (Article 11) impinges in any way on the fiscal responsibilities of Member States. Instead it states that where a Member State considers that a decision taken under the relevant provisions impinges directly and in a significant manner on its fiscal responsibilities, it shall notify the Authority, the Commission and the European Parliament within ten working days after notification of the Authority's decision to the competent authority if it will or will not comply with that decision. The Member State shall justify why and provide an **impact assessment** on how much the decision impinges on its fiscal responsibilities. The Council's decision to maintain the Authority's decision shall be taken by simple majority of members. The decision to revoke the Authority's decision shall be taken by a qualified majority of its members. In neither of these cases the vote of the Members concerned shall be taken into account. A qualified majority shall be defined as at least 55% of the members of the Council excluding

the Member State concerned, comprising at least 65% of the population of the Union excluding the population of the Member State concerned. If a decision adopted under the provisions on emergency situations leads to use of the funds set up according to the Guarantee Schemes or the Stability Funds, Member States shall not call on the Council to maintain or revoke a decision taken by the Authority.

Board of Supervisors and Management Board: the report made some amendments to the composition of these Boards and their decision making.

Chairperson: with regard to appointment, it is now stated that the Commission shall present a shortlist of three candidates to the European Parliament. After conducting hearings of those candidates, the European Parliament shall select one of those candidates. The candidate so selected shall be appointed by the Board of Supervisors. The Chairperson or his or her alternate shall, at least quarterly, make a statement before the European Parliament and answer any questions put by its members.

The European Supervisory Authorities (Joint Committee): the Joint Committee will have its **headquarters in Frankfurt**. It will cooperate with other ESA's particularly on a specified list of topics. In the event that an institution identified as potentially a systemic risk reaches across different sectors, the Joint Committee shall decide which European Supervisory Authority shall act as leading competent authority and/ or adopt binding decisions to resolve problems between the European Supervisory Authorities.

Remedies: Member States and the Union institutions, as well as any natural or legal person, may lodge a direct appeal before the Court of Justice against decisions of the Authority, in accordance with Article 263 of the Treaty on the Functioning of the European Union.

Financial provisions: revenue for the Authority will consist only of the Union subsidy and of fees. There will be no obligatory contributions from the national public authorities.

For the first year of operation of the Authority, ending on 31 December 2011, the budget shall be approved by the Members of the Level 3 Committee, following consultation with the Commission and then transmitted to European Parliament and the Council for endorsement.

Evaluation: the Commission's report in 3 years must evaluate, inter alia: a) the convergence in supervisory standard practices reached by competent authorities; (b) the functioning of the colleges of supervisors; (c) the role of the Authority on the supervision of institutions which may pose a systemic risk; (d) the application of the Safeguard clause (e) the level of harmonisation of national Insurance Guarantee Schemes. It will also evaluate whether:

- it is appropriate to continue separate supervision of banking, insurance, occupational pensions, securities and financial markets, or whether they should be brought under a single supervisor;
- prudential supervision and supervision of the conduct of business should be combined or separated; it is appropriate to simplify and reinforce the architecture of the ESFS in order to increase the coherence between the macro and the micro levels and between the ESAs;
- it is appropriate to simplify and reinforce the architecture of the ESFS in order to increase the coherence between the macro and the micro levels and between the ESAs;
- it is appropriate to increase the regulatory powers of the ESAs;
- the evolution of the ESFS is consistent with that of the global evolution;
- there is sufficient diversity and excellence within the ESFS;
- accountability and transparency in relation to publication requirements are adequate.