

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

2011/0006(COD) - 11/03/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 560 votes to 113 with 4 abstentions, a legislative resolution on the proposal for a Directive of the European Parliament and of the Council amending Directives 2003/71/EC and 2009/138/EC in respect of the powers of the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority.

Parliament adopted its position in first reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise between Parliament and Council.

Framework for financial supervision: the amended text stressed that **financial stability is a prerequisite** if the real economy is to provide jobs, credit and growth. It recalled the **number of resolutions adopted by the European Parliament** before and during the financial crisis calling for a move towards more integrated European supervision (particularly in its resolutions of [13 April 2000](#), [21 November 2002](#), [11 July 2007](#), [23 September 2008](#) and [9 October 2008](#) with recommendations to the Commission on Lamfalussy follow-up: Future Structure of Supervision.

Amendment of Union legislation: in order to ensure the proper functioning of the European System of Financial Supervision ('ESFS'), Parliament stressed the need to amend Union legislation regarding the field of operation of the three European supervisory authorities -the European Insurance and Occupational Pensions Authority ([EIOPA](#)), the European Banking Authority ([EBA](#)) and the European Securities and Markets Authority ([ESMA](#)) (collectively referred to as the European Supervisory Authorities (ESAs), aiming at **more effective implementation of micro-level supervision**.

Draft technical standards: the regulations establishing the ESFS provide that the ESAs may develop draft technical standards in the areas specifically set out in the relevant legislation, to be submitted to the Commission for adoption by means of delegated or implementing acts. Directive 2010/78/EU in respect of the powers of the European Supervisory Authorities has identified a first set of such areas. It is proposed that this Directive should identify a further set of areas, in particular for:

- [Directive 2003/71/EC](#) on the prospectus to be published when securities are offered to the public or admitted to trading;
- [Directive 2009/138/EC](#), on the taking-up and pursuit of the business of insurance and reinsurance (SOLVENCY II); and
- [Regulation \(EC\) No 1060/2009](#) on credit ratings agencies.

Regulation (EU) No 1094/2010 establishing the European Supervisory Authority (European Insurance and Occupational Pensions Authority) ('EIOPA'), and Regulation (EU) No 1095/2010 establishing the European Supervisory Authority (European Securities and Markets Authority) ('ESMA').

Regulatory technical standards (adopted as delegated acts under Article 290 of the TFEU) and implementing technical standards (adopted as implementing acts under Article 291 of the TFEU) should:

- contribute to a **single rulebook** for financial services legislation as endorsed by the European Council in its conclusions of June 2009;
- provide for **transitional measures** subject to adequate deadlines, if the costs of immediate implementation would be excessive compared to the benefits involved.

Before submitting regulatory or implementing technical standards to the Commission, the ESAs should, where appropriate, conduct open public consultations relating to them and analyse the potential related costs and benefits.

In the interests of an early finalisation of measures required to implement the framework rules under Directive 2009/138/EC (Solvency II), the Commission will be allowed, for a transitional period, to adopt some of the regulatory technical standards provided for in this Directive, in accordance with the procedure for the adoption of delegated acts.

Settlement of disagreements in the framework of the Directive on Solvency II: Directive 2009/138/EC provides for joint decisions in a certain number of areas, such as regards the approval of applications to use an internal model at group and subsidiary levels. In all of these areas, Members propose amendment clearly stating that in the event of disagreement, EIOPA may resolve the disagreement.

The EIOPA should not replace the exercise of discretion by the supervisory authorities in compliance with Union law. However, it should be possible for disagreements to be resolved and cooperation to be strengthened before a final decision is taken by the national supervisory authority or issued to an institution. EIOPA should resolve disagreements by mediating between the conflicting views of the supervisory authorities.

Better knowledge of the assets held by insurance and reinsurance undertakings: these undertakings should be required only to provide such information to their national supervisory authorities that is relevant for the purposes of supervision. After assessing the nature, scale and complexity of the risks inherent in the business of the undertaking, national supervisory authorities should have the power to allow limitations on the frequency and the scope of information to be reported or to exempt from reporting on an item-by-item basis only where that undertaking does not exceed specific thresholds. The smallest undertakings will be eligible for limitations and exemption and those undertakings will not represent more than 20 % of a Member State's life and non-life insurance or of its reinsurance market.

Allowing for the consistent calculation of technical provisions by insurance and reinsurance undertakings: to this end, a central body should be able to derive, publish, and update certain technical information relating to the risk-free interest rate term structure on a regular basis, taking account of observations in the financial market. Members consider that the manner in which the risk-free interest rate term structure is derived should be transparent and **avoid artificial volatility** of technical provisions and eligible own funds and provide an incentive for good risk management.

Under market conditions similar to those at the date of entry into force of the Directive, the starting point for the extrapolation of risk-free interest rates, in particular for the euro, should be **at a maturity of 20 years**.

The risk-free interest rate term structure should be determined on the basis of a holistic and consistent approach to the setting of all assumptions and parameters on which the curve is based

ensuring consistency over time and avoiding artificial volatility of technical provisions and eligible own funds in excess of the capital requirements. The starting point for the extrapolation of risk-free interest rates in euro should be 20 years.

In order to avoid changes of asset spreads from impacting on the amount of own funds of these undertakings, they should be allowed to adjust the relevant risk-free interest rate term structure for the calculation of the best estimate in line with the spread movements of their assets. The application of such a matching adjustment should be subject to supervisory approval and strict requirements on the assets and liabilities should ensure that the insurance and reinsurance undertakings can hold their assets to maturity.

In order to prevent pro-cyclical investment behaviour, insurance and reinsurance undertakings should also be allowed to **make a volatility adjustment**. Undertakings should publicly disclose the impact of the volatility adjustment on their financial position to ensure adequate transparency.

In view of the importance of discounting for the calculation of technical provisions, Directive 2009/138/EC should ensure uniform conditions for the choice of discount rates by insurance and reinsurance undertakings.

Conformity with Solvency Capital Requirement (SCR): in order to mitigate undue potential pro-cyclical effects, the period for restoring compliance with the SCR should be extended in exceptional adverse situations, including in the case of steep falls in financial markets, persistent low interest rate environments and high-impact catastrophic events, affecting a significant share of the market EIOPA should be responsible for declaring the existence of exceptional adverse situations and the Commission should be empowered to adopt measures by means of delegated and implementing acts specifying the criteria and the relevant procedures.

Transparency: in order to ensure the transparent application of the volatility adjustment, the matching adjustment and the transitional measures on risk-free interest rates and on technical provisions provided for pursuant to this Directive, insurance and reinsurance undertakings should publicly disclose the impact of not applying these measures on their financial positions.

In order to ensure that interested stakeholders are properly informed about the structure of insurance and reinsurance groups, information on their legal structure and the governance and organisational structure must be made available to the public.

Conditions to be applied to third countries: to encourage international convergence toward risk-based solvency regimes, Members specify the conditions in relation to the treatment of third country regimes in order for these third countries to be recognised temporarily equivalent.

Where the Commission determines that a third country's prudential regime for group supervision is temporarily equivalent, additional supervisory reporting should be allowed for in order to ensure the protection of policy holders and beneficiaries within the Union.

Health insurance: the calculation of the Solvency Capital Requirement (SCR) for health insurance should reflect national equalisation systems and should also account for changes in the national health legislation, as these are a fundamental part of the insurance system within those national health markets.

Review: in order to ensure that the Union's objective of long-term sustainable growth and of primarily protecting policy holders and also ensuring financial stability, continue to be met, the Commission should review the appropriateness of the methods, assumptions and standard parameters used when calculating the standard formula for the SCR within five years of the application of Directive 2009/138/EC.