

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

2011/0006(COD) - 16/04/2014 - Final act

PURPOSE: to improve the functioning of the internal market by means of a new prudential regulation and supervision, protecting policy holders, maintaining the stability of the financial system, and strengthening international supervisory coordination.

LEGISLATIVE ACT: Directive 2014/51/EU of the European Parliament and of the Council amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

CONTENT: the Directive aims to amend the EU Regulation applicable to the insurance sector as regards the powers of the two supervisory authorities active at the EU level, that is, the European Insurance and Occupational Pensions Authority ([EIOPA](#)) and the European Securities and Markets Authority ([ESMA](#)).

The new Regulation amends [Directive 2009/138/EC](#) ('**Solvency II**') on insurance and [Directive 2003/71/EC](#) concerning the prospectus, following the creation of EIOPA and ESMA in 2010 as part of the new system of European financial supervision.

The amendments principally focus on the following points:

Definition of the scope of technical standards: the identification of areas in which technical standards should be adopted should strike an appropriate balance between building a single set of harmonised rules and avoiding unduly complicated regulation and enforcement. Matters subject to technical standards should be genuinely technical, where their development requires the expertise of supervisory experts.

Regulatory technical standards (adopted in the form of **delegated acts** under Article 290 of the Treaty on the Functioning of the European Union (TFEU) and the implementing technical standards (adopted in the form of **implementing acts** under Article 290 of the TFEU) should:

- contribute to a **single rulebook** for financial services law as endorsed by the European Council in its conclusions of June 2009;
- allow Member States to require **additional information** or impose more stringent requirements in specific areas, where those legislative acts provide for such discretion;
- be able to 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 European Supervisory Authorities (ESAs) should, where appropriate, conduct open **public consultations** relating to them and analyse the potential related costs and benefits.

Enabling the ESAs to resolve disagreements: the Directive introduces the possibility for the new authorities to settle disputes in a balanced way in the areas in which the sectoral legislation already allows for a joint decisions.

The Solvency II Directive provides for joint decisions in a number of areas, as for example, Directive 2009/138/EC provides for joint decisions as regards the approval of applications to use an internal model at group level. In all of those areas, an amendment should clearly state that, in the event of disagreement, **EIOPA may resolve the disagreement.**

Transitional regime and other amendments to the Solvency II Directive: the new Directive introduces some amendments to the Solvency II Directive, in particular, relating to: i) governance; ii) supervisory reporting and public disclosure; iii) the determination and classification of **own funds**; iv) the standard formula for the **calculation of the solvency capital**; v) the choice of methods and assumptions for the calculation of technical provisions, including **the determination of the relevant risk-free interest rate term structure**, which should avoid artificial volatility of technical provisions and eligible own funds and provide an incentive for good risk management.

The Directive also contains transitional measures in some areas, including **conditions in relation to the treatment of such third-country regimes** in order for those third countries to be recognised temporarily as equivalent. The aim is to avoid market disruption while ensuring the availability of insurance products in order to allow for a smooth transition to a new Solvency II regime

Revision: the Commission shall, by 1 January 2017 and annually thereafter, submit to the European Parliament and to the Council a report specifying whether the ESAs have submitted the draft regulatory technical standards and implementing technical standards provided for in Directives 2003/71/EC and 2009/138/EC, whether the submission of such draft regulatory technical standards or implementing technical standards is mandatory or optional, together with proposals, where appropriate.

ENTRY INTO FORCE: 23.05.2014.

TRANSPOSITION: no later than 31.03.2015. The measures shall apply from 01.01.2016.

DELEGATED ACTS: the Commission shall be empowered to adopt delegated acts in order to take account of the technical developments in the financial markets and to specify the requirements laid down in the directives amended by this Directive. The power to adopt delegated acts shall be conferred on the Commission for a period of **four years** from 23 May 2014. The European Parliament or the Council may object to a delegated act within a period of **three** months from the date of notification (this period can be extended for three months). If the European Parliament or the Council make objections, the delegated act will not enter into force.