Basic information

2004/0097(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Reinsurance Amending Directive 98/78/EC 1995/0245(COD) Amending Directive 2002/83/EC 2000/0162(COD) Repealed by 2007/0143(COD) Amended by 2006/0166(COD) Amended by 2006/0280(COD) **Subject** 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.04 Banks and credit 2.50.05 Insurance, pension funds	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	SKINNER Peter (PSE)	21/09/2004

Committee for opinion	Rapporteur for opinion	Appointed
IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.	
JURI Legal Affairs	GAUZÈS Jean-Paul (PPE-DE)	26/10/2004

Council of the European Union

Council configuration	Meetings	Date
Environment	2684	2005-10-17

European Commission

Commission DG	Commissioner
Financial Stability, Financial Services and Capital Markets Union	

Key events

Date	Event	Reference	Summary
		COM(2004)0273	Summary

21/04/2004	Legislative proposal published		
15/09/2004	Committee referral announced in Parliament, 1st reading		
26/04/2005	Vote in committee, 1st reading		Summary
12/05/2005	Committee report tabled for plenary, 1st reading	A6-0146/2005	
06/06/2005	Debate in Parliament		
07/06/2005	Decision by Parliament, 1st reading	T6-0214/2005	Summary
07/06/2005	Results of vote in Parliament		
17/10/2005	Act adopted by Council after Parliament's 1st reading		
16/11/2005	Final act signed		
16/11/2005	End of procedure in Parliament		
09/12/2005	Final act published in Official Journal		

Technical information

Procedure reference	2004/0097(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Amending Directive 98/78/EC 1995/0245(COD) Amending Directive 2002/83/EC 2000/0162(COD) Repealed by 2007/0143(COD) Amended by 2006/0166(COD) Amended by 2006/0280(COD)
Legal basis	EC Treaty (after Amsterdam) EC 047-p2 EC Treaty (after Amsterdam) EC 055
Stage reached in procedure	Procedure completed
Committee dossier	ECON/6/22090

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee opinion	JURI	PE355.369	06/04/2005	
Committee report tabled for plenary, 1st reading/single reading		A6-0146/2005	12/05/2005	
Text adopted by Parliament, 1st reading/single reading		T6-0214/2005 OJ C 124 25.05.2006, p. 0020-0132 E	07/06/2005	Summary

Council of the EU

Document type	Reference	Date	Summary

Draft final act	03639/5/2005	16/11/2005	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2004)0273	21/04/2004	Summary
Document attached to the procedure	SEC(2004)0443	21/04/2004	Summary
Commission response to text adopted in plenary	SP(2005)2882	13/07/2005	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES1423/2004 OJ C 120 20.05.2005, p. 0001-0005	27/10/2004	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Directive 2005/0068
OJ L 323 09.12.2005, p. 0001-0050 Summary

Reinsurance

2004/0097(COD) - 21/04/2004 - Legislative proposal

PURPOSE : to lay down the legal framework for prudential supervision of reinsurance activities in the Community. PROPOSED ACT : Directive of the European Parliament and of the Council. CONTENT : This paper discusses the key features of reinsurance and highlights the difference between the latter and primary insurance. It also discusses the international nature of the reinsurance business and points out that there are currently no harmonised reinsurance supervision rules in the EU. The lack of an EU regulatory framework for reinsurance has resulted in significant differences in the level of supervision of reinsurance undertakings in the EU. The different national rules have created uncertainty for direct insurance companies (and their policyholders), barriers to trade within the internal market, administrative burden and costs as well as weakening the EU position in international trade negotiations: - the selection of reinsurers is of decisive importance for an insurance company, and could also affect the company's ability to pay claims towards policyholders; - certain EU countries use systems where assets of the reinsurer must be pledged (collateralised) in order to cover outstanding claims provisions. This makes optimal investment management more difficult and thus results in higher operational costs for reinsurance undertakings. This could in fact increase the price the reinsurer charges for taking over risks from direct insurance companies. Reinsurance companies may also decide not to be active in markets where the posting of collaterals is required, and consequently the availability of reinsurance protection will be more restricted. - the lack of mutual recognition between EU supervisory authorities in reinsurance in certain cases means that reinsurance undertakings are subject to different supervisory rules in several Member States. For reinsurance companies this could lead to significant double work and increased administrative burdens. Examples of burdensome administrative measures are the multiple fit and proper checks of the group's highest management, double requirement for auditors' confirmation of balances as well as the obligation for branches to issue financial statements according to local GAAP (generally accepted accounting principles) for the whole group. - it is argued that the lack of a harmonised EU system makes international mutual recognition agreements more difficult. The absence of such agreements means that European reinsurers are confronted with important barriers to entry into foreign markets, such as the requirement of posting collateral for the value of their commitments in the

foreign market where the reinsurer intends to conduct business. If no actions are taken at EU level, there is a risk that the internal market for reinsurance services would continue to work in a sub optimal way, which would harm the EU reinsurance industry. Negotiations with third markets on mutual recognition agreements could be significantly more difficult. The Commission's proposal has the following features: - a supervisory approach based on harmonisation and mutual recognition; - fast-track approach for a directive based primarily on current direct supervision rules; - mandatory licensing system; - solvency margin requirements in line with those of direct insurance, however with the possibility to increase this margin up to 50 % through comitology for non-life reinsurance when this is objectively justified. The proposed Directive requires reinsurance undertakings - like direct insurance companies - to be licensed in order to conduct reinsurance business. The proposal lays down the minimum conditions necessary to obtain the official authorisation. This system will increase the responsibility of the Home Member State's supervisory authorities, as they become the sole competent authority for the prudential supervision of the reinsurance undertaking within the Community. Enhanced cooperation between Member States' competent authorities will also be required. In order to ensure a level playing field between reinsurance undertakings and insurance undertakings carrying on reinsurance activities, the proposal also provides for the subsequent adaptations to the non-life insurance Directive 73/239 /EEC and life assurance Directive 2002/83/EC. Accordingly, insurance undertakings that conduct reinsurance by way of acceptances activities will be subject to the provisions of the reinsurance directive in respect of the required solvency margin, where the volume of their reinsurance activities represents a significant part of their entire business. These provisions will only be applicable when the Commission has adopted the decision adjusting the required solvency margin for non-life reinsurance activities. In order to take account of a very special situation that might arise in a Member State where it is not possible to obtain reinsurance cover in the commercial market, the proposal does not apply to the provision of reinsurance cover conducted by a Member State, when it acts as a reinsurer of last resort for reasons of public interest. However this provision does not exempt the Member State from complying with Community provisions concerning competition rules and state aids. An example is the situation that arose in the air insurance sector after the attacks of 11th September 2001, where the reinsurance market failed to provide reinsurance cover for some risks. Member States were prompted to provide such a reinsurance cover. The schemes set up were examined under EU law and in particular state aid rules before being authorised.

Reinsurance

2004/0097(COD) - 16/11/2005 - Final act

PURPOSE: To provide a comprehensive legal framework of reinsurance and to amend a number of related EU Directives in order to take account of the new reinsurance legal framework.

PROPOSED ACT: Directive 2005/68/EC of the European Parliament and of the Council on reinsurance and amending Council Directives 73/239, 92 /49, 98/78 and 2002/83.

CONTENT: Current EU legislation applies to direct insurance undertakings in respect of their entire business activities; both in terms of their direct insurance activities as well as reinsurance activities by way of acceptances. However, reinsurance activities conducted by specialised reinsurance undertakings are neither subject to that regime nor any other regime provided for by Community law. Hence the need for this Directive. Indeed, weaknesses in existing provisions has resulted in significant differences in the level of supervision of reinsurance undertakings in the Community, which in turn creates barriers to the pursuit of reinsurance business. The purpose of the Directive, therefore, is to establish a legal framework for the taking up and pursuit of reinsurance activities. The provisions are defined in the following structure:

- Title I: Scope and definitions

As far as the scope is concerned, the Directive lays down the rules for the taking up and the pursuit of the self-employed activity of reinsurance carried on by reinsurance undertakings, which conduct only reinsurance activities and which are established in a Member State or are looking to establish themselves within a Member State. The Directive lists the insurance undertakings, bodies and activities to which it does not apply. In addition, this Title lists a comprehensive set of terms related to reinsuranced.

- Title II: The taking up of the business of reinsurance and authorisation of the reinsurance undertaking

Under this Title, a number of provisions are outlined and cover, *inter alia*, the principle and scope of authorisation, the form of reinsurance undertaking, where the head office of the reinsurance undertakings should be situated, the scheme of operations, the need for prior consultation with Member State authorities and under what conditions an authorisation can be refused.

- Title III: Conditions governing the business of reinsurance.

This Title seeks to establish the principles and methods of financial supervision, professional secrecy and exchanges of information, the duties of the auditors, rules relating to technical provisions, rules relating to the solvency margin and to the guarantee fund, the required solvency margins as well as reinsurance undertakings in difficulty or in an irregular situation and the withdrawal of authorisation.

- Title IV: Provisions relating to finite reinsurance and special purpose vehicles.

This Tile establishes provisions relating to both finite reinsurance and to special purpose vehicles. The remaining Titles are as follows:

- Title V: Provisions relating to the right of establishment and freedom to provide services.
- Title VI: Reinsurance undertakings whose head offices are outside the Community and conducting reinsurance activities in the Community.
- Title VII: Subsidiaries of parent undertakings governed by the laws of a third country and acquisition of holdings by such parent undertakings
- Title VIII: Other provisions. This Title deals with the right to apply to the courts, co-operation between the Member States and the Commission as well as committee procedures and implementing measures.

- Title IX: Amendments to existing Directives

As far as transposition is concerned, the Member States must bring all the laws, regulation and administrative provisions necessary to comply with this Directive into force by 10 December 2007.

ENTRY INTO FORCE: 10 December 2005.

Reinsurance

2004/0097(COD) - 07/06/2005 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted the resolution drafted by Peter SKINNER (PES, UK), making several amendments designed to provide technical clarifications and improvements. (Please see the summary of 26/04/2005.)Life reinsurance would be subject to the same rules as direct non-life insurance, with an option for the direct life insurance rules to be applied to life reinsurance business that has heavy investment content.

Parliament has inserted new rules on special purpose vehicles. The directive allows a solvency reduction of 50% based on the assets invested by a special purpose vehicle.

Finally, the text contains a commitment to phase out the collateral requirements in the EU. In order to take account of potential difficulties that Member States might encounter with the abolition of collateral requirements in national legislation, the European Parliament has proposed a transitional period of 12 months to comply with this requirement in addition to the two years provided for the application of the directive as a whole.

Reinsurance

2004/0097(COD) - 21/04/2004 - Document attached to the procedure

COMMISSION'S IMPACT ASSESSMENT

1- PROBLEM IDENTIFICATION

There are currently no harmonised reinsurance supervision rules in the EU. The lack of an EU regulatory framework for reinsurance has resulted in significant differences in the level of supervision of reinsurance undertakings in the EU. The different national rules have created uncertainty for direct insurance companies (and their policyholders), barriers to trade within the internal market, administrative burden and costs as well as weakening the EU's position in international trade negotiations. This legislation will affect reinsurance, insurance undertakings and insurance supervisers directly, and policy-holders indirectly.

For more information regarding the context of this problem, please refer to the complementary summary of the Communication (COM(2004)0443).

2- OBJECTIVES

Three guiding objectives for reinsurance supervision work have been identified:

- The system should establish a sound and prudent regime in the interest of policyholders. Strong and well-supervised reinsurers contribute to a stronger internal market and international financial stability;

- The system should build on essential coordination of Member States' legislation and mutual recognition of the supervision in the Member State where the reinsurance undertaking is licensed. Once licensed, a company should automatically be allowed to conduct reinsurance business throughout the EU under rules regarding freedom of establishment and freedom to provide services. No additional supervision of - or checks on - the reinsurance undertaking would be performed by supervisors in host Member States. This approach has shown its suitability during many years in the direct insurance field;

- The introduction of a harmonised system for reinsurance supervision should lead to the abolition of systems with the pledging of assets to cover outstanding claims provisions.

3- POLICY OPTIONS AND IMPACTS

Five main issues have been identified.

3.1- Issue 1: *Overall approach.*

The objectives outlined in point 2 could be addressed in three different ways: maintaining the status quo, introducing a market mechanism solution /voluntary disclosure of reinsurance-related information, or alternatively a recommendation concerning indirect supervision practice; and, lastly, supervisory solutions.

Most interested parties believe that there are problems in the internal market for reinsurance that must be addressed. **Thus, a status quo solution does not seem applicable**.

Most believe there is a need for supervisory action in the field: as in the direct insurance field, whose experience is relevant and instructive, the Commission believes that reinsurance legislation at EU level is necessary given the significant difference in approaches between Member States. Insurance supervision is a public concern and requires public regulation. A voluntary, disclosure-based approach would not provide sufficient trust in the supervisory system.

The supervisory alternative offers the most positive market and economic impacts (reduced administrative burden, single European licence, facilitated market access, etc.), although there will be compliance costs for reinsurance companies, and, in some cases, capital increases may be needed. Social impacts (i.e. primarily the policyholders) would be best served by this alternative. **There is unlikely to be any material impact on the employment situation in the sector and there is no evidence that premium levels would rise as a result of the introduction of supervision**.

3.2- Issue 2: *Fast-track solution or long-term, comprehensive project.*

While both alternatives could fulfil the objectives outlined in point 2, most who were consulted felt there is a clear need for swift action and thus a fast-track solution is preferred.

Under the fast-track approach, the perceived benefits - as well as certain implementation costs - will come earlier than the longer term Solvency II project. **On balance, it is considered that the swift introduction of a reinsurance supervisory scheme will give advantages to EU reinsurers**. Insurance undertakings and policyholders are likely to benefit from the rapid introduction of reinsurance supervision.

3.3- Issue 3: *A voluntary passport or a mandatory licensing system.*

Member States have expressed their support for a mandatory licensing system at several occasions. The insurance industry has reiterated their preference for a voluntary passport solution. The Commission believes that a mandatory licensing system would be more likely to fulfil the set objectives of the EU reinsurance supervision project. Such a system would cover the whole market and thereby better serve financial stability and internal market concerns (obj. 1). A mandatory licensing system would furthermore lead to increased coordination between Member States' treatment of all reinsurers (obj. 2). Concerning the objective to abolish collateralisation requirements (obj. 3), the Commission considers that the mandatory licensing solution is more efficient as it has the support of most supervisors in the EU and internationally.

After broad consultation, **a mandatory licensing system was considered to be more likely to fulfil the set objectives of the EU reinsurance supervision project**. Such a system would cover the whole market and thereby better serve financial stability and internal market concerns. It would, furthermore, lead to more coordination between Member States' treatments of all reinsurers (obj. 2). With respect to the abolition of collateralisation requirements (obj. 3), it would be more efficient as it has the support of most supervisors in the EU and internationally.

3.4- Issue 4: *Quantitative solvency requirements for non-life reinsurance.*

These rules relate to issues like the solvency margin requirement, the level of the minimum guarantee fund, reinsurance reduction factor and investment rules. The study looks at two possible approaches to designs and levels for solvency requirements: 1) alternatives where the solvency requirements for reinsurance are close to those of direct non-life insurance, possibly combined with comitology powers to increase the requirements in particularly risky lines of insurance, and 2) alternatives where the solvency requirements for reinsurance are higher than those for direct non-life insurance, for example 50% or 100% higher. Also looked at was a hybrid of the two alternatives (1b) that builds on 1) but includes elements of comitology for future amendments to the reinsurance regime.

Although several of the proposed solutions could fulfil the objectives set, **alternative 1b gives supervisors an important function in assessing the need for further capital for certain lines and is therefore better adapted to reinsurance business than a general increase of the solvency requirement with a certain percentage**.

3.5- Issue 5: *Quantitative solvency requirements for life reinsurance.*

For life reinsurance, certain other considerations than in non-life have to be made. The life reinsurance business is sometimes very similar to direct life business, but often it has another character as normally only risk-bearing elements (i.e. not the savings part) are reinsured. Two distinct solutions have been discussed for life reinsurance: 1) in principle use direct life rules for life reinsurance, and 2) approximate through use of direct non-life rules also for life reinsurance. Both alternatives could include certain adjustments such as class enhancement.

Both solutions could fulfil the objectives but quantitative requirements are only one part of the supervisory system and must also be seen in the light of other supervisory measures. Among insurance companies and Member States divergent views prevail. **Thus, the Commission has decided to propose that life reinsurance should be subject to direct life rules and non-life reinsurance to direct non-life rules**. This would lead to higher requirements in life reinsurance than those currently used in Ireland and the UK.

CONCLUSION: The Commission has therefore decided to present a proposal based on harmonization and mutual recognition. It has opted for a fast-track approach based primarily on current direct supervision rules with a mandatory licencing system. Collateralisation requirements would be abolished. Solvency requirements would be in line with those of direct insurance, however with the possibility of class enhancement up to 50% through comitology for non-life reinsurance.

4- FOLLOW UP

The proposal is expected to follow normal implementation procedures (i.e. transposition in Member States within 18-24 months). As in other insurance fields, implementation may be facilitated through cooperation between Member States' ministries and supervisory authorities. The Insurance Committee will follow how the directive is implemented and used. The ongoing long-term project, Solvency II, will also at a later stage deal with reinsurance-related issues, and to that end work in this project would need to take the working of this reinsurance directive into account. As the Solvency II system will come into place in the EU within a number of years, no formal evaluation clause has been included in the proposed fast-track reinsurance directive.