

19. European Financial Supervision

ABI Contact: Hugh Savill, 020 7216 7501

ABI Lead Committee: European Committee

Other interested committees: Financial Regulation and Tax

Issue: Changes to the institutional framework for the supervision of financial services at EU level.

Status: On 23 September 2009, the European Commission proposed draft legislation to strengthen the EU framework of supervision. The proposals envisage the establishment of a macro-prudential body, the European Systemic Risk Board, and three sectoral Authorities for banking, insurance and securities.

The Council of Ministers reached agreement in December. All the discussion among Finance Ministers was about the safeguard procedure in Article 23, and its impact on crisis management in Article 9 and “fiscal sovereignty”. Three changes were made:

- 1) Article 10 (emergency situation) has been amended so it is the Council rather than the Commission that can determine an “emergency”.
- 2) Article 23 (safeguards) changes made strengthening a member state’s ability to challenge a decision by an Authority on the grounds it impinges on its fiscal responsibilities by i) an appeal to ECOFIN to suspend the decision, ii) a simple majority to overturn a decision and ii) can appeal to the European Council. This is now being referred to as the “triple lock”.
- 3) Article 29 (Decision-making) Approval of decisions in the Board of Supervisors is still by a simple majority vote but it allows for rejection should it be by a blocking minority (mirroring normal Council process).

Some significant improvements were also made to the Commission’s European Insurance and Occupational Pensions (EIOPA) proposal:

- 1) Deletion/minimising references to addressing decisions directly or have direct powers to a financial institutions in Articles 6, 10, 11
- 2) On technical standards (Article 7) it has been clarified that such decisions must not include “policy choices” and that the Commission/ Authority must conduct public consultation. We also please that they have maintained the Commission’s role of endorsement (or not) as a check and balance.
- 3) There will now be **two** Stakeholder groups (that **EIOPA** will consult with at least twice a year) one entitled **Insurance and Reinsurance Stakeholder Group** (made up of 30 members from “insurance and reinsurance firms, their members and beneficiaries as well as consumers and users”) and the other the **Occupational Retirement Provision Stakeholder Group** (30 members from “occupational pensions funds, their members and beneficiaries as well as consumers and users”)
- 4) Article 1 2b introduces a safeguard clause on pensions regulation “With regard to institutions for occupational retirement provision, the Authority shall act without prejudice to national social and labour law”.

Handling in the Parliament will be awkward, with debate so far showing a very wide variety of views. Different rapporteur's have been appointed for each proposal, and reaching a co-ordinated Parliament view will be difficult.

ABI Action: ABI has been closely involved in this debate since the publication of the de Larosiere report earlier this year. We have submitted notes on the issues raised for insurers by the Commission's proposal to the Treasury and to MEPs on ECON. We gave written evidence to the Inquiry by the Treasury Select Committee. Members of the Secretariat have spoken to key British MEPs, in advance of discussions in the European Parliament.

Background: the European Systemic Risk Board would be a macro-prudential advisory body, with no binding powers. Members of the Board are drawn largely from Central Banks.

The insurance authority EIOPA (European Insurance and Occupational Pensions Authority) would be a successor body to CEIOPS, composed mainly of representatives from the national regulators. EIOPA would have additional powers to: impose consistent application of EU law, settle disagreements between national regulators, impose actions in the event of a crisis, and draw up technical standards – thus moving towards a single rule book.

The main issues raised for British insurers are as follows:

European Systemic Risk Board (ESRB) – We welcome the creation of the Board and its function to monitor the bigger macro-prudential picture of the EU's economy. Clearly the intention for the ESRB is consider **all** financial services not just banks. We consequentially have two major concerns regarding the composition of the Board.

1. ***The lack of insurance and asset management representation.*** Investors and insurers may be affected by regulatory decisions made with banks in mind (eg. a decision to suspend bank payments on subordinated debt would have huge implications for insurers who own that debt). The ESRB is dominated by central bankers. There needs to be a **greater balance of expertise**. Out of 60+ seats on ESRB, there is only one "insurance" representative (chair of EIOPA) and one for "asset management" (ESMA). As a minimum we would wish to see an insurance representative in the vice-chairman position, and that the Board requests advice from EIOPA for any considerations affecting insurers. We also believe membership of the Steering Group should be reduced from 12 to 8 members, reducing the number of general Board members in order to secure balanced representation.
2. ***Independence and expertise.*** The ESRB and the Advisory Technical Committee (Article 12) that supports it is dominated by supervisory representatives. We believe that the ATC should seek members with industry experience.

European Insurance and Occupational Pensions Authority (EIOPA)

1. The decision-making procedures envisaged in the EIOPA Regulation do not offer adequate ***checks and balances on the judgement of supervisory bodies***. Experience of the financial crisis has underlined the dangers of

supervisors relying exclusively on their own judgement. We welcome opportunities for intervention by the European Parliament and the Commission to act as a check on Authority decisions.

2. There are instances (Articles 9, 10 and 11) where **regulatory decisions can be made directly from EIOPA to an insurance company**. We believe this undermines the generally accepted principle that day to day supervision should be done by the local supervisor. As a means of avoiding regulatory fragmentation we support the introduction of binding decisions (as a last resort), **however these they should be addressed to national authorities**. Having direction from two authorities could place companies in a very difficult position.
3. **Technical standards** (Article 7): The power of EIOPA to develop technical standards is exactly the same as that for developing Level II implementing measures. We are concerned that this will lead to technical but commercially significant issues being downgraded from level II implementing measures (which are subject to Parliamentary scrutiny and subject to serious debate and consultation with stakeholders) to a lesser consultative process under technical standards. We support the Commission's role of endorsement, as a check on the Authorities.
4. **The scope of EIOPA's actions in pensions**. The regulation of pensions across member states is highly diverse. Great care needs to be taken to ensure that decisions taken at EU level do not undermine national systems for saving for retirement. An obligation on EIOPA to take into account the implications for national systems of savings for retirement should be introduced.
5. **Independence**. The Board of Appeal (Article 44-46) is a welcome proposal. However, the members of the Board need to be genuinely independent of all bodies involved in the supervision of financial services. In particular, strong representation should be encouraged by practitioners with relevant expertise and experience

Useful documents:

[Commission proposals](#)