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European authorities issue regulatory overhaul plans

European Commission's package of proposals includes establishing a European Systemic Risk Board and bodies to govern banking and securities and insurance

ON SEPTEMBER 23 and 24, the European Commission published its legislative response to the financial crisis, as Philip Woolfson and Guy Soussan of Steptoe & Johnson's European Union (EU) insurance practice report, commenting on the plans for a new insurance authority.

The package of proposals is the commission's follow-up to the de Larosière Report last February and the commission's own communication in May. The package comprises four draft regulations, the first of which establishes the European Systemic Risk Board (ESRB); a separate draft decision provides for the European Central Bank to act as the ESRB's secretariat.

In brief, the ESRB will develop a European macro-prudential overview of the financial sector. The ESRB will have no legal personality and no binding powers; it may only issue warnings and recommendations.

The other three regulations establish authorities for the banking and securities and markets sectors (EBA and ESMA) and a European Insurance and Occupational Pensions Authority (EIOPA). Together with national supervisors, these three authorities make up the new European System of Financial Supervisors (ESFS).

The proposals comprise some 200 pages and include numerous provisions common to each authority, with the principal differences reflecting the different objectives of each, their scope of action and the definitions applied in each sector.

For the insurance sector, EIOPA is the key entity; it is a direct descendant of the Committee of European Insurance and Occupational Pensions Supervisors (Ceios). It will be endowed with legal personality and will have a board of supervisors, a management board and a chairman.

The legal basis for its establishment is Article 95 of the EU Treaty, which provides for measures for the approximation of legislation. For the insurance sector, this means EIOPA, within the ESFS, will develop a single rulebook to ensure the uniform application of rules in the EU.

A primary task of

EIOPA will be to assist national authorities in a consistent interpretation and application of community rules (without prejudice to the prerogatives of the European Court of Justice).

EIOPA will specifically assume tasks carried out by Ceios, but will also have significantly increased powers, including the development of technical standards within the scope of primary (level 1) legislation (and with some stakeholder consultation). EIOPA will adopt these standards but the commission will then "endorse" them in the form of binding regulations and decisions.

EIOPA will also have power, either on its own initiative or on request from a supervisor or the commission, to ensure consistent application of community provisions by a national supervisor. Its findings will be notified to the supervisor and enforced by the commission in the form of a binding decision.

To date, the commission has been the sole guardian of community law (subject to European Court review). The new architecture introduces a novel institutional development (ie. the emergence of new watchdog whose origins lie within national authorities themselves).

Faced with national inaction, EIOPA will even be able, subject

to procedural safeguards, to adopt a binding decision directly applicable to a financial institution. EIOPA will have power to take similar action in cross-border emergency situations – which would, in practice, most likely be directed towards pan-European groups (including those of third-country parentage). This power has proven controversial; the text includes safeguards to preserve member states' "fiscal responsibilities".

EIOPA may also settle disagreements between supervisors. This mechanism should only address material issues, eg where the action or inaction of a national supervisor is gravely detrimental to policyholders' interests – and, again, subject to safeguards.

Finally, EIOPA will assume other roles (eg, possible reallocation of responsibilities in specified circumstances, such as to ensure consistency in group supervision and optimal use of national expertise – a euphemism for addressing national authority shortcomings).

Other EIOPA roles include relations with third countries (in particular, the power to conclude "administrative arrangements", to prepare "equivalence decisions" and to allow third countries to take part in its work).

During the financial crisis the insurance sector has sought to distinguish its business model and supervisory regime from the banking sector. The sector will be poorly represented within the ESRB; conversely, EIOPA is very much on a par with its banking and securities peers.

As for timing, the legislative package is subject to the "co-decision procedure" (ie, adoption by the European Parliament and the Council).

The commission has proposed January 1, 2011 as the date of application – a short deadline in the EU legislative process.

The sector can therefore expect a lively legislative debate in the next few months.

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European Commission: the ESRB, along with EBA, ESMA and EIOPA and national bodies, will form Europe's new financial regulatory system

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