

EUROPEAN PARLIAMENT

2004



2009

Committee on Legal Affairs

2007/0143(COD)

2.7.2008

OPINION

of the Committee on Legal Affairs

for the Committee on Economic and Monetary Affairs

on the amended proposal for a directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (recast)
(COM(2008)0119 – C6-0231/2007 – 2007/0143(COD))

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SHORT JUSTIFICATION

Solvency II is a directive that updates the 14 existing directives on insurance and reinsurance. It is in a recast format so that only the new parts are open for amendment.

The main purpose of the directive is to make the capital, or solvency requirements, depend upon risk, analysed in the context of the whole business of the undertaking. This is qualitative as well as quantitative. In particular it should be noted that insurance companies are exposed to risk not only for liabilities but also in the assets that they hold to cover those liabilities. Indeed failures of insurance companies have more often been as a result of asset problems than liability problems.

The risk analysis is done on the basis of models. Standard models can be used but large undertakings will also be able, indeed expected, to develop their own internal models which will be approved by the supervisor. Groups can also request that they be supervised as a whole so as to benefit from the greater diversification that it brings into the risk calculations, resulting in a lower capital requirement than would be the case for the sum of the solo entities.

Capital is divided into a minimum capital requirement (MCR) which is the level that each undertaking must always have in order to continue in full authorisation. The Solvency Capital Requirement (SCR), is a higher level of capital that should normally be held and, if breached, acts as an early warning for supervisory intervention. The additional SCR assets, over and above the MCR, may be held at Group (parent or holding company) level. If a subsidiary falls below the MCR (and normally before that is reached) supervisors will require transfer of capital to the subsidiary.

Fundamental to operation of the group supervisory processes is cooperation between national supervisors in the host states with subsidiaries and the home state of the parent company. The supervisor from the home country of the parent company has an enhanced role as the 'group supervisor'. The Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) also has a role in dispute settlement between supervisors and achieving regulatory convergence.

Within this framework there are several areas that it is wished to draw to the particular attention of the European Parliament:

Group Supervision

It is necessary to make it clearer that all supervisors are involved in group supervision, that all should have access to documentation as a routine matter and be dynamically involved in decision making.

Transfer of Funds in Group Support

Ensuring that funds are movable between undertakings is paramount. If spare funds are with the parent or holding company then it is much more straightforward to have legal structures in place enabling the transfer, and this may be the best option at least in the first instance.

However it is not unknown for groups to move funds between subsidiaries and so a legally enforceable mechanism for doing that is also envisaged. This would seem to require a contractual basis between each respective pair of subsidiaries.

National Supervisory Resources and Responsibility

The new supervisory regime requires an in depth understanding of both asset and liability risk. Decisions are both quantitative and qualitative. It is essential that supervisors have the resources to do this thoroughly, across all undertakings, not just those that are perceived as crucial to market stability.

It also needs to be clarified that when national supervisors act as group supervisors they have a mandate beyond that which is purely national and they must safeguard the interests of all policyholders. Actions properly taken as a group supervisor should not result in legal proceedings that those actions have compromised national responsibilities.

Legal Entity for CEIOPS

At present CEIOPS does not have a legal entity but is an advisory committee to the Commission. Given the specialist nature of some of the advice, it is in essence a decision, however it is phrased. If CEIOPS had a legal entity it would be more accountable for that advice. This could be done via a Regulation entering into force at the latest with the implementation of this directive unless it has been done by other channels, for example as part of the Lamfalussy review. The ECJ Case C-217/04 of 2 May 2006 which indicates that Article 95 can be a basis for setting up a body could, by extension, also apply to Article 47 on which this directive is also based.

Achieving a consistent EU approach to supervisory liability

In general in the EU there is a 'regulator friendly' view of liability and any claim for compensation can generally only be made on the basis of gross negligence or bad faith, although the test varies in different countries. The ECJ has said this approach does not run counter to EU law. In particular in the Peter Paul case the ECJ ruled that a Member State can (as Germany did) legislate that supervisors fulfil functions only in the public interest and thereby preclude individuals from claiming compensation for defective supervision.

So the question is a political one as to whether one wishes to recognise some right to reparation against supervisory authorities. It was certainly the view of the Parliament to do so in the vote on the Equitable Life enquiry and it certainly seems reasonable, in the context of group supervisory functions going cross border, for there to be more harmonisation (indeed this probably provides the legal base).

Guarantee schemes

With an increasing cross border nature to insurance business, and with cross border supervision, it is appropriate for there to be cross border guarantee schemes that are at least equivalent and take account of the supervision structures. Further work to that end is necessary but beyond the possibility of reasonable inclusion in this directive.

The recasting technique

Under the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular pursuant to point 9 thereof, the Consultative Working Party, consisting of the respective legal services of the European Parliament, the Council and the Commission, met on 13 March 2008 for the purpose of examining the proposal submitted by the Commission.

The said examination resulted in the Consultative Working Party's establishing by common accord that the proposal does not comprise any substantive amendments other than those identified as such. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing text, without any change in its substance.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive

Citation 1

Text proposed by the Commission

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2) **and** 55 thereof,

Amendment

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2), 55 **and** 95 thereof,

Justification

This change will ensure the Commission is able to propose either level 2 implementing directive or level 2 implementing regulation on the basis of this framework directive.

Amendment 2

Draft legislative resolution

Recital A (new)

A. whereas, according to the Consultative Working Party of the Legal Services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts without any change in their substance,

Amendment 3

Draft legislative resolution Paragraph 1

Draft legislative resolution

Amendment

1. Approves the Commission proposal as ***amended and as aligned with*** the recommendations of the ***groupe consultatif des services juridiques du Parlement, du Conseil et de la Commission;***

1. Approves the Commission proposal as ***adapted to*** the recommendations of the ***Consultative Working Party of the Legal Services of the European Parliament, the Council and the Commission and as amended hereunder;***

Amendment 4

Proposal for a directive Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) The new solvency regime will result in even better protection for all concerned; this will require the Member States to provide the authorities responsible for financial supervision with adequate resources.

Amendment 5

Proposal for a directive Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) Basing supervision on qualitative as well as quantitative risk management principles is likely to require an increase in supervisory resources.

Justification

The supervisory requirements established under Pillars 2 and 3, such as the approval of internal models, their monitoring and regular review, and the consequent closer cooperation and engagement with other supervisors and companies, is likely to mean national supervisors will need more resources to fulfil their enhanced responsibilities properly.

Amendment 6

Proposal for a directive Recital 23

Text proposed by the Commission

Amendment

(23) It is necessary to promote supervisory convergence not only in respect of supervisory tools but also in respect of supervisory practices. The Committee of European Insurance and Occupational Pensions Supervisors established by Commission Decision 2004/6/EC should play an important role in this respect and report regularly on the progress made.

(23) It is necessary to promote supervisory convergence not only in respect of supervisory tools but also in respect of supervisory practices. The Committee of European Insurance and Occupational Pensions Supervisors established by Commission Decision 2004/6/EC should play an important role in this respect and report regularly on the progress made. ***That Committee should be given a legal basis and personality under a new regulation to enter into force at the same time as this Directive.***

Justification

CEIOPS is being given decision making powers, for example to resolve disputes in group support. In the event that there is a legal challenge to any such decision it is desirable, and

more accountable, if CEIOPS is a party to any proceeding rather than being represented solely in the personality of the Commission. The ECJ has ruled in Case C-217/04 of 2 May 2006 that Article 95 can be a basis for setting up a body. By extension a similar conclusion can be made for Article 47.

Amendment 7

Proposal for a directive Recital 35

Text proposed by the Commission

(35) The supervisory regime should provide for a risk-sensitive requirement, which is based on a prospective calculation to ensure accurate and timely intervention by supervisory authorities (the Solvency Capital Requirement), and a minimum level of security below which the amount of financial resources should not fall (the Minimum Capital Requirement). Both capital requirements should be harmonized throughout the Community in order to achieve a uniform level of protection for policyholders.

Amendment

(35) The supervisory regime should provide for a risk-sensitive requirement, which is based on a prospective calculation to ensure accurate and timely intervention by supervisory authorities (the Solvency Capital Requirement), and a minimum level of security below which the amount of financial resources should not fall (the Minimum Capital Requirement). ***The Minimum Capital Requirement should be calculated in a clear and simple manner, and in such a way as to ensure that the calculation can be audited. It should correspond to an amount of eligible basic own funds below which policyholders and beneficiaries would be exposed to an unacceptable level of risk if insurance and reinsurance undertakings were allowed to continue their operations. With regard to the Minimum Capital Requirement and the Solvency Capital Requirement, the confidence level should correspond to the range of 80% to 90% over a one-year period.*** Both capital requirements should be harmonized throughout the Community in order to achieve a uniform level of protection for policyholders.

Amendment 8

Proposal for a directive
Recital 70

Text proposed by the Commission

(70) It is necessary to ensure that own funds are appropriately distributed within the group and available to protect policyholders and beneficiaries where needed. To this end insurance and reinsurance undertakings within a group should have sufficient own funds to cover their solvency capital requirement, unless the objective of protection of policyholders and beneficiaries can effectively be achieved otherwise. Insurance and reinsurance undertakings within a group should therefore be authorised to cover their Solvency Capital Requirement with group support declared by their parent undertaking, under defined circumstances. In order to assess the need for and prepare any possible future revision of the group support regime, the Commission should report on the rules of the Member States and the practices of the supervisory authorities in this field.

Amendment

(70) It is necessary to ensure that own funds are appropriately distributed within the group and available to protect policyholders and beneficiaries where needed. To this end insurance and reinsurance undertakings within a group should have sufficient own funds to cover their solvency capital requirement, unless the objective of protection of policyholders and beneficiaries can effectively be achieved otherwise. Insurance and reinsurance undertakings within a group should therefore be authorised to cover their Solvency Capital Requirement with group support declared by their parent undertaking, under defined circumstances. ***For the equal protection of all policyholders, Member States should provide for free movement of assets and liabilities to enable solvency capital and eligible own funds to be reconfigured within a group for the purposes of group support and without risk of suspensive actions. For those Member States where such movement is not yet guaranteed, group support should in the interim period additionally include those instruments or other mechanisms necessary to ensure that funds are transferred in good time. Member States should also ensure that claims arising from group support commitments are treated as equivalent to insurance claims.*** In order to assess the need for and prepare any possible future revision of the group support regime, the Commission should report on the rules of the Member States and the practices of the supervisory authorities in this field.

Justification

The group supervision and support regimes should operate on an overall economic basis

allowing intra group transfer. Group support to restore of MCR can be other than a transfer of funds, for example a reduction of liabilities, what is needed is the ability to reconfigure solvency capital to meet circumstances. In some Member States there may presently be some legal obstruction or uncertainty to transfers, for which additional safeguards could be implemented in the interim. This should not remain the long term method of operation. In the event of winding up, or other administrative procedures, the ranking of group support as equivalent to policyholder claims needs to be established.

Amendment 9

Proposal for a directive

Recital 75

Text proposed by the Commission

(75) The supervisory authorities should have access to all the information relevant to the exercise of group supervision.

Cooperation between the authorities responsible for the supervision of insurance and reinsurance undertakings as well as between those authorities and the authorities responsible for the supervision of undertakings active in other financial sectors should be established.

Amendment

(75) Supervisors from all Member States in which an undertaking in the group is established should be involved in group supervision. ***They should all have access to documentation as a matter of routine and should be dynamically involved in decision-making.*** Cooperation between the authorities responsible for the supervision of insurance and reinsurance undertakings as well as between those authorities and the authorities responsible for the supervision of undertakings active in other financial sectors should be established.

Justification

Supervisors would essentially be a College.

Amendment 10

Proposal for a directive

Recital 95 a (new)

Text proposed by the Commission

Amendment

(95a) Given the increasingly cross-border nature of insurance business, it is necessary to work on the functioning of insurance guarantee throughout Europe, taking account of the supervision structures. This work in progress will be

done outside the scope of this Directive, since new solvency requirements will by themselves offer a high level of harmonised protection for policyholders.

Justification

It is a matter of clarification. It is useful at that stage to have an open work on the insurance guarantee schemes throughout Europe. These schemes are a complement to the solvency II directive, which will already ensure a high and harmonized protection for policyholders.

Amendment 11

**Proposal for a directive
Article 4**

Text proposed by the Commission

(1) ***Without*** prejudice to Articles 5 to 10 this Directive shall not apply to insurance undertakings whose annual premium income does not exceed EUR 5 million.

(2) If the amount set out in paragraph 1 is exceeded for three consecutive years this Directive shall apply from the fourth year.

Amendment

(1) ***For the first three years after the date referred to in Article 310(1), without*** prejudice to Articles 5 to 10, this Directive shall not apply to insurance undertakings whose annual premium income does not exceed EUR 5 million.

Justification

It is sensible to exclude small firms from the scope of the directive for the time being. Concessions on the basis of the proportionality principle still have to be laid down and implemented. The threshold should be retained for the first three years, therefore. Afterwards proportionality rules will have been laid down and firms will have had long enough to adapt to the new rules. In the long term, smaller insurance companies also want Solvency II quality standards.

Amendment 12

**Proposal for a directive
Article 27**

Text proposed by the Commission

Member States shall ensure that the supervisory authorities are provided with the necessary means to achieve the main

Amendment

Member States shall ensure that the supervisory authorities are provided with the necessary means, ***and have the***

objective of supervision, namely the protection of policyholders and beneficiaries.

relevant expertise and capacity, to achieve the main objective of supervision, namely the protection of policyholders and beneficiaries.

Justification

The supervisory requirements established under Pillars 2 and 3, such as the approval of internal models, their monitoring and regular review, and the consequent closer cooperation and engagement with other supervisors and companies, is likely to mean national supervisors will need more resources to fulfil their enhanced responsibilities properly.

Amendment 13

Proposal for a directive Article 28 – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that the requirements laid down in this Directive are applied in a manner which is proportionate to the nature, complexity and scale of the risks inherent in the business of an insurance or reinsurance undertaking.

Amendment

3. Member States shall ensure that the requirements laid down in this Directive are applied in a manner which is proportionate to the nature, complexity and scale of the risks inherent in the business of an insurance or reinsurance undertaking ***even if the undertaking concerned is not vital for the overall financial stability of the market.***

Justification

All business should be regulated - regardless of the size, since the impact of a failure is not always linear to the size, but depends on the type of insurance a company underwrites and the geography of their activities.

Amendment 14

Proposal for a directive Article 47 – paragraph 2

Text proposed by the Commission

2. The actuarial function shall be carried out by persons with sufficient knowledge

Amendment

2. The actuarial function shall be carried out by persons with sufficient knowledge

of actuarial and financial mathematics and able where appropriate, to demonstrate their relevant experience and expertise with applicable professional and other standards.

of actuarial and financial mathematics, ***having capacity proportionate to the complexity and risk structure of the undertaking concerned***, and able where appropriate, to demonstrate their relevant experience and expertise with applicable professional and other standards.

Justification

To ensure proper resource and knowledge.

Amendment 15

Proposal for a directive

Article 52 – paragraph 1 – point (a)

Text proposed by the Commission

(a) if, by disclosing such information, ***the competitors of*** the undertaking ***gain significant*** undue ***advantage***;

Amendment

(a) if, by disclosing such information, the undertaking ***would suffer*** undue ***commercial harm***;

Justification

The test should be 'harm' to the undertaking. This may be through unfair competition or otherwise.

Amendment 16

Proposal for a directive

Article 70

Text proposed by the Commission

Member States shall ensure that the supervisory authorities participate in the activities of the Committee of European Insurance and Occupational Pensions Supervisors pursuant to the second paragraph of Article 2 of Commission Decision 2004/6/EC.

Amendment

Member States shall ensure that the supervisory authorities participate in the activities of the Committee of European Insurance and Occupational Pensions Supervisors pursuant to the second paragraph of Article 2 of Commission Decision 2004/6/EC, ***and that national mandates conferred on supervisors do not inhibit the performance by them of their duties as members of that Committee or under this Directive.***

Justification

The advice of CEIOPS must be fair and honest and must not be politically compromised. Therefore national supervisors must be in a position to communicate and fully engage with each other.

Amendment 17

**Proposal for a directive
Article 76 – paragraph 2 – subparagraph 2**

Text proposed by the Commission

The calculation of the best estimate shall be based upon current and credible information and realistic assumptions and be performed using adequate actuarial methods and statistical techniques.

Amendment

The calculation of the best estimate shall be based upon current and credible information and realistic assumptions and be performed using adequate, ***applicable and relevant*** actuarial methods and statistical techniques.

Justification

Adequate is insufficient given that "applicability and relevance" appears in Article 83.

Amendment 18

**Proposal for a directive
Article 109 – paragraph 1 – point (c)**

Text proposed by the Commission

(c) the correlation parameters;

Amendment

(c) the correlation parameters ***and procedures for the updating of those parameters***;

Justification

As has been shown by the recent financial crisis correlation parameters may need to be adjusted quickly.

Amendment 19

Proposal for a directive

Article 119 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. The methods used to calculate the probability distribution forecast shall be based on adequate actuarial and statistical techniques and shall be consistent with the methods used to calculate technical provisions.

Amendment

2. The methods used to calculate the probability distribution forecast shall be based on adequate, ***applicable and relevant*** actuarial and statistical techniques and shall be consistent with the methods used to calculate technical provisions.

Justification

Adequate is insufficient given that "applicability and relevance" appears in Article 83.

Amendment 20

Proposal for a directive

Article 130 – paragraph 4 – subparagraph 5 a (new)

Text proposed by the Commission

Amendment

Supervisors may take account of the effects on asset management of voluntary codes of conduct and transparency adhered to by the relevant institutions dealing in unregulated or alternative investment instruments.

Justification

It is a matter of clarification. Supervisors will not take account whether or not institutions use codes but will take account of the codes that are used, if any, and their effect on the asset management by the insurance undertakings.

Amendment 21

Proposal for a directive

Article 142 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. The supervisory authority of the home

1. The supervisory authority of the home

Member State shall withdraw an authorisation granted to an insurance or reinsurance undertaking in the following cases:

Member State, ***whilst continuing any necessary supervision***, shall withdraw an authorisation granted to an insurance or reinsurance undertaking in the following cases:

Justification

Acknowledging the need for strong supervisory intervention when the MCR is breached (hence the recast from "may" to "shall"), it is important to clarify that the full withdrawal of authorisation relates to newly established undertakings, and that in regards to other undertakings supervisory authorities should be able to take all measures necessary to safeguard the interests of policyholders, and obligations under reinsurance contracts, in proceedings such as winding-up etc.

Amendment 22

Proposal for a directive

Article 142 – paragraph 1 – point (c)

Text proposed by the Commission

(c) the undertaking does not comply with the Minimum Capital Requirement and the supervisory authority considers that the finance scheme submitted is manifestly inadequate or, the undertaking concerned fails to comply with the approved scheme within three months from the observation of the noncompliance with the Minimum Capital Requirement.

Amendment

(c) the undertaking does not comply with the Minimum Capital Requirement and the supervisory authority considers that the finance scheme submitted is manifestly inadequate or, the undertaking concerned fails to comply with the approved scheme within three months from the observation of the noncompliance with the Minimum Capital Requirement; ***the withdrawal of authorisation in these circumstances shall not result in any cessation of supervision with respect to safeguarding the interests of policyholders and overseeing any winding-up, takeover or similar proceedings.***

Justification

Acknowledging the need for strong supervisory intervention when the MCR is breached (hence the recast from "may" to "shall"), it is important to clarify that the full withdrawal of authorisation relates to newly established undertakings, and that in regards to other undertakings supervisory authorities should be able to take all measures necessary to safeguard the interests of policyholders, and obligations under reinsurance contracts, in proceedings such as winding-up etc.

Amendment 23

Proposal for a directive

Article 234 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) the primary source of group support is own funds transferred from the parent undertaking to its subsidiary; in the event that group support may be provided from resources available in a subsidiary, legally enforceable contracts or other mechanisms shall be in place to enable the transfer of eligible own funds;

Amendment 24

Proposal for a directive

Article 237 – paragraph 2

Text proposed by the Commission

Amendment

2. The group support shall take the form of a declaration to the group supervisor, ***expressed in a legally binding document and*** constituting a commitment to transfer own funds eligible under Article 98(5).

2. The group support shall take the form of a declaration to the ***college of supervisors, via the*** group supervisor, ***including where necessary evidence of legally enforceable instruments*** constituting a commitment to transfer own funds eligible under Article 98(5).

Justification

The communications for group support involve the entire group, so should be communicated to the college. Reduction in liabilities is another way group support could be exercised.

Amendment 25

Proposal for a directive

Article 237 – paragraph 3 – point c

Text proposed by the Commission

Amendment

(c) that the document containing the declaration of group support meets all requirements existing under ***the law of the***

(c) that the document containing the declaration of group support ***and any necessary accompanying instrument***

parent undertaking to be recognised as a legal commitment, and that any recourse before a legal or administrative body shall not have suspensive effect.

meets all requirements existing under *a law enforceable in the Member State of the undertaking providing group support*, and that any recourse before a legal or administrative body shall not have suspensive effect, *and including the establishment of group support up to the limit of the most recent declaration, or as provided under Article 244(1) when relevant, and ranking equivalent to policyholder claims including in circumstances of reorganisation, composition, assignment, take-over or any other administrative proceedings.*

Justification

Enforceability of group support covering additional interim provisions in the event of legal uncertainties (see recital 70) and establishment of the ranking of group support.

Amendment 26

Proposal for a directive Article 244

Text proposed by the Commission

Subsidiaries of an insurance or reinsurance undertaking: ***reduction of group supports***

1. Where several requests to transfer eligible own funds are addressed to the parent undertaking and the group supervisor in accordance with Articles 238 or 239, and the group does not have sufficient eligible own funds to meet all of those together, the amounts resulting from the most recent declarations accepted shall be reduced where necessary.

Amendment

Subsidiaries of an insurance or reinsurance undertaking: ***equal treatment***

1. Where several requests to transfer eligible own funds are addressed to the parent undertaking and the group supervisor in accordance with Articles 238 or 239, and the group does not have sufficient eligible own funds to meet all of those together, ***the following rules shall apply:***

(a) all insurance and reinsurance undertakings which are subsidiaries of the parent undertaking shall be held jointly responsible, together with the parent undertaking, up to the amounts resulting from the most recent declarations accepted in respect of each subsidiary which is subject to the rules laid down in

The reduction shall be calculated for each subsidiary with a view to ensuring that each subsidiary is subject to the same ratio between the sum of its available assets and any transfer from the group on the one hand and the sum of its technical provisions and its minimum capital requirement on the other hand.

2. Member States shall ensure that liabilities resulting from insurance contracts entered into by the parent undertaking are not treated more favourably than liabilities resulting from insurance contracts entered into by any subsidiary which is subject to the rules laid down in Articles 236 to 241.

Amendment 27

Proposal for a directive

Article 251 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. Member States shall ensure that when a supervisory authority acts as a group supervisor it is recognised as doing so in a non-discriminatory manner; consequently, legitimate actions taken as a group supervisor, including but not limited to transfers of capital, shall not be regarded, on the basis of that supervisor's national mandate, as contrary to the interests of the Member State or of policyholders in that Member State.

Justification

As Group supervisor the national supervisor of the home member state has a duty to act in the interest of the group. National supervisors should not be worried that decisions made on this basis could result in their being sued by policyholders from the home member state who believed this action to be to their detriment.

Amendment 28

Proposal for a directive

Article 262 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(2a) In the event of non-compliance by a holding company or a parent company with the requirements of group support, the group supervisor may determine that supervision on a group basis is to cease.

Justification

A sanction to lose all capital advantages of being in a group in the event of defaulting on group support obligations.

Amendment 29

Proposal for a directive

Article 304 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(3a) Notwithstanding paragraph 1 and having regard to the decision-making procedure provided for by Article 251(4), and the tasks referred to in recital 23, the Committee of European Insurance and Occupational Pensions Supervisors shall be given legal personality in a regulation to enter into force at the same time as this Directive.

Justification

CEIOPS is being given decision making powers, for example to resolve disputes in group support. In the event that there is a legal challenge to any such decision it is desirable, and more accountable, if CEIOPS is a party to any proceeding rather than being represented solely in the personality of the Commission. The ECJ has ruled in Case C-217/04 of 2 May 2006 that Article 95 can be a basis for setting up a body. By extension a similar conclusion can be made for Article 47.

PROCEDURE

Title	Insurance and reinsurance - Solvency II
References	COM(2008)0119 – C6-0231/2007 – COM(2007)0361 – 2007/0143(COD)
Committee responsible	ECON
Opinion by Date announced in plenary	JURI 24.9.2007
Drafts(wo)man Date appointed	Sharon Bowles 19.11.2007
Discussed in committee	19.12.2007 8.4.2008
Date adopted	25.6.2008
Result of final vote	+: 21 -: 0 0: 0
Members present for the final vote	Carlo Casini, Titus Corlăţean, Marek Aleksander Czarnecki, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Neena Gill, Klaus-Heiner Lehne, Katalin Lévai, Hans-Peter Mayer, Manuel Medina Ortega, Hartmut Nassauer, Aloyzas Sakalas, Francesco Enrico Speroni, Diana Wallis, Jaroslav Zvěřina
Substitute(s) present for the final vote	Sharon Bowles, Georgios Papastamkos, Michel Rocard, Gabriele Stauner, József Szájer