



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Legal Affairs

2010/0232(COD)

1.3.2011

OPINION

of the Committee on Legal Affairs

for the Committee on Economic and Monetary Affairs

on the proposal for a directive of the European Parliament and of the Council amending Directives 98/78/EC, 2002/87/EC and 2006/48/EC as regards the supplementary supervision of financial entities in a financial conglomerate (COM(2010)0433 – C7-0203/2010 – 2010/0232(COD))

Rapporteur: Sebastian Valentin Bodu

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SHORT JUSTIFICATION

Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 (the 'Financial Conglomerates Directive') introduced supplementary and consolidated supervision of financial groups. The objective of that supplementary supervision was to control the potential risks arising from double gearing (i.e. the multiple use of capital) and so-called group risks: the risk of contagion, management complexity, concentration and conflicts of interest, which could arise when several licences for different financial services are combined.

Whilst the directives relating to banking activities and insurance activities aim to constitute sufficient capital buffers to protect customers and policyholders, the Financial Conglomerates Directive regulates the supplementary supervision of group risks.

The primary aim of this proposal is to ensure appropriate supplementary supervision, i.e. to plug the unintended gaps that have evolved in supplementary supervision owing to the definitions in the sectoral directives, namely the Capital Requirements Directive and the insurance directives. Given that the consolidated/group supervision in the sectoral directives is applied only to financial/insurance holding companies and the sectoral provisions do not refer to mixed financial holding companies, a financial/insurance holding company changing structure and becoming a mixed financial holding company will only be subject to supplementary supervision under the Financial Conglomerates Directive, and the consolidated/group supervision at the ultimate parent level will be lost. Thus, supervisory authorities have to choose (in terms of applying – or not – a waiver in determining whether a group is a financial conglomerate) if they wish to continue to classify companies as financial/insurance holding companies in order to keep consolidated/group supervision, or if they want to apply 'only' supplementary supervision, under the Financial Conglomerates Directive.

The Financial Conglomerates Directive supplements the Capital Requirements Directive and the insurance directives as regards additional supervision at the top level of a group. To that end, it also contains provisions for coordination among different supervisors of a group. The Financial Conglomerates Directive defines the relevant competent authority and requires the coordinator (the top level supervisor) to consult this authority as regards certain supervisory questions. However, the current provisions leave room for different interpretations as regards the identification of the relevant competent authorities. An extensive interpretation results in a high number of authorities that must be consulted by the coordinator at the financial conglomerate level. This may undermine the effective and efficient coordination of the work to be carried out by the 'college' consisting of a coordinator and the relevant competent authorities.

In order to allow for still further convergence of supervisory practices, a possibility for the European Banking Authority and the European Insurance and Occupational Pensions Authority to issue guidelines is introduced. This should reflect the supplementary nature of the Directive. By way of example, when assessing risk concentrations on a group-wide basis relating to several risk types potentially materializing throughout the group (interest rate risk, market risk, etc.), this assessment should complement the specific supervision of, for

example, large exposures as provided for in the Capital Requirements Directive. The proposal is in keeping with the principle of proportionality and subsidiarity and underscores the fact that only European Union legislation can ensure that financial conglomerates operating in more than one Member State are subject to the same requirements and supervision.

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 – amending act

Article 1 – point 4

Directive 98/78/EC

Article 4 – paragraph 2

Text proposed by the Commission

2. Where insurance undertakings or reinsurance undertakings authorised in two or more Member States have as their parent undertaking the same insurance holding company, non-member-country insurance undertaking, non-member country reinsurance undertaking, mixed financial holding company or mixed-activity insurance holding company, the competent authorities of the Member States concerned may reach an agreement as to which of them shall be responsible for exercising supplementary supervision.

Amendment

2. Where insurance undertakings or reinsurance undertakings authorised in two or more Member States have as their parent undertaking the same insurance holding company, non-member-country insurance undertaking, non-member country reinsurance undertaking, mixed financial holding company or mixed-activity insurance holding company, the competent authorities of the Member States concerned may reach an agreement as to which of them shall be responsible for exercising supplementary supervision. ***Where the authorities are unable to reach an agreement, the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) or both, as appropriate, acting through the Joint Committee of the European Supervisory Authorities, shall arbitrate between the competent authorities, and if necessary settle the disagreement by issuing a binding decision.***

Amendment 2

Proposal for a directive – amending act

Article 2 – point 3

Directive 2002/87/EC

Article 6 – paragraph 4 – subparagraph 2

Text proposed by the Commission

When applying method 2 (Deduction and aggregation) referred to in Annex I, the calculation shall take account of the proportional share held by the parent undertaking or undertaking which holds a participation in another entity of the group. ‘Proportional share’ means the proportion of the subscribed capital which is directly or indirectly held by that undertaking.

Amendment

When applying method 2 (Deduction and aggregation) referred to in Annex I, the calculation shall take account of the proportional share held by the parent undertaking or undertaking which holds a participation in another entity of the group. ‘Proportional share’ means the proportion of the subscribed capital which is directly or indirectly held by that undertaking **or, where there are multiple voting shares, of the voting rights pertaining to the shareholders.**

Justification

There may sometimes be multiple voting shares (several votes per share); what matters in such cases are the votes and not the capital share held – i.e. the degree of control exercised.

Amendment 3

Proposal for a directive – amending act

Article 3 – point 13

Directive 2006/48/EC

Article 4 – paragraph 1 – subparagraph 2

Text proposed by the Commission

They shall apply those provisions from **[1 July 2011]**.

Amendment

They shall apply those provisions from **[31 October 2011]**.

Justification

The deadline of 1 July 2011 is too short to allow for national-level implementation of a directive, given the length of time needed for transposition.

PROCEDURE

Title	Amendments to Directives 98/78/EC, 2002/87/EC and 2006/48/EC as regards the supplementary supervision of financial entities in a financial conglomerate
References	COM(2010)0433 – C7-0203/2010 – 2010/0232(COD)
Committee responsible	ECON
Opinion by Date announced in plenary	JURI 7.9.2010
Rapporteur Date appointed	Sebastian Valentin Bodu 27.10.2010
Discussed in committee	27.1.2011
Date adopted	28.2.2011
Result of final vote	+: 18 -: 0 0: 0
Members present for the final vote	Raffaele Baldassarre, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Alexandra Thein, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Piotr Borys, Sergio Gaetano Cofferati, Sajjad Karim, Eva Lichtenberger, Toine Manders