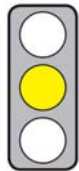


## MAIN ISSUES

**Objective of the Regulation:** To establish a European Insurance and Occupational Pensions Authority (EIOPA).

**Parties affected:** National insurance supervisors, insurance companies, private customers.



**Pros:** (1) A closer coordination of national insurance supervision across Europe is reasonable.  
(2) The technical standards to be developed by the EIOPA can prevent distortion of competition and improve the quality of supervision.

**Cons:** (1) The EIOPA should not be responsible for the enforcement of EU supervisory rules.  
(2) The EIOPA's role as arbitrator is not compatible with its activities in the college of supervisors.  
(3) The EIOPA does not have sufficient power to be effective in emergency situations.

## CONTENT

### Title

**Proposal COM(2009) 502** of 23. September 2009 for a **Regulation** of the European Parliament and the Council **establishing a European Insurance and Occupational Pensions Authority**

### Brief Summary

#### ► Objective and context of the Regulation

- The Commission wishes to establish a European System of Financial Supervisors (ESFS). It is to comprise:
  - a European Insurance and Occupational Pensions Authority (EIOPA)
  - a European Banking Authority (EBA); [Proposal COM(2009) 501; cp. [CEP Policy Brief](#)];
  - a European Securities and Markets Authority (ESMA), [Proposal COM(2009) 503; cp. [CEP Policy Brief](#)]; and
  - a European Systemic Risk Board (ESRB) [COM(2009) 499; cp. [CEP Policy Brief](#)] for the "macro prudential oversight" of the entire EU financial system.
- The ESFS is to become "a network of national and Community supervisory authorities" leaving day-to-day supervision of financial institutions at national level. (Recital 6 and 7)
- EIOPA is to replace the existing Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS); its registered office is seated in Frankfurt am Main. (Art. 1 and 5)

#### ► Composition of EIOPA

- The EIOPA is to comprise a board of supervisors, a management board, a chairperson, an executive director and a board of appeal (Art. 4).
- The central body of the EIOPA is the board of supervisors, which decides on standards, guidelines and recommendations. It is composed of the following members:
  - as voting members: the heads of the relevant national insurance supervisors;
  - as non-voting members: the head of the EIOPA, one representative each from the ESRB, the EBA and the ESMA, as well as a representative from the Commission (Art. 25 Abs. 1, Art. 28 and 29).

#### ► Scope of action and tasks of EIOPA

- EIOPA is to act within the scope:
  - the Reinsurance Directive (64/225/EEC and 2005/68/EC), the Direct Insurance Directives (73/239/EEC, 73/240/EEC, 76/580/EEC, 84/641/EEC, 88/357/EEC and 92/49/EEC), the Co-Insurance Directive (78/473/EEC), the Legal Expenses Insurance Directive (87/344/EEC), the Directive on supervision in insurance-groups (98/78/EC), the Directive on the reorganisation and winding-up of insurance undertakings (2001/17/EC), the Life Assurance Directive (2002/83/EC), which will all be repealed by 1. November 2012 and substituted by the Solvency II-Directive [cp. [CEP Policy Brief, in German only](#)];
  - the Insurance Mediation Directive (2002/92/EC), Directive on the activities and supervision of institutions for occupational retirement provision (2003/41/EC), the Financial Conglomerates Directive (2002/87/EC), the Directive as regards prudential assessment of acquisitions in the financial sector (2007/44/EC), the Money Laundering Directive (2005/60/EC), the Directive concerning the distance marketing of consumer financial services (2002/65/EC);
  - all future legal acts entitling EIOPA to take action. (Art. 1 (2))
- In this respect EIOPA is to:
  - develop legally binding technical standards (Art. 7),
  - ensure a "consistent application" of European rules by national supervisory authorities (Art. 8 and 9),
  - settle disagreements between national supervisory authorities (Art. 11),
  - safeguard the stability of financial markets in emergency situations based on special powers for specific actions (Art. 10).

► **Developing binding technical standards**

- The EIOPA is to develop binding technical standards for the regulatory areas defined in the Directives mentioned above which must not, however, “involve policy decisions” (Art. 1 (2), Art. 7 and CEP Document annexed). As for the remaining areas of these Directives, the EIOPA may develop non-binding standards (Art. 8).
- The EIOPA may adopt technical standards with a qualified majority voting, in which the same weighting of votes applies as in the Council of Ministers. The technical standards are formally adopted by the Commission in the form of a regulation or decision. (Art. 7 and Art. 29 (1))

► **Three-step mechanism for a consistent application of EU supervisory rules**

- The EIOPA is to ensure that national supervisory authorities fully apply EU supervisory rules, including the technical standards. For this purpose a three-step mechanism has been developed (Art. 9 (1)):
  - Step 1: If the EIOPA deems the conduct of a national supervisory authority incompatible with EU-law it may recommend to the authority concerned the action “necessary to comply with EU-law” (Art. 9 (3)).
  - Step 2: Where the supervisory authority concerned does not follow the EIOPA’s recommendation, the Commission may take a decision requiring action and specify an implementation deadline (Art. 9 (4)).
  - Step 3: Where the supervisory authority further fails to comply with the Commission’s decision, the EIOPA may adopt a decision addressed directly to an insurance institution requiring it to take the necessary action. This may include the cessation of any practice (Art. 9 (6)).
- The EIOPA’s decision on these questions may be based on a simple majority vote (Art. 29 (1)).

► **Settlement of disagreements**

- Where EU-law requires cooperation between national supervisory authorities, the EIOPA is to be responsible for settling irresolvable conflicts between these authorities (Art. 11 (1)).
- Such a settlement consists in a decision taken by the EIOPA with a simple majority; this is binding to all parties involved (Art. 11 (3)).
- Should a supervisory authority not comply with this decision, the EIOPA may adopt a decision addressed directly to an insurance institution requiring it to take the necessary action (Art. 11 (4)).

► **Special powers in emergency situations**

- In the case of “developments which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system”, the Commission may declare the existence of an “emergency situation” (Art. 10 (1)).
- In such a case the EIOPA may, within the scope of its powers, adopt a decision by simple majority obliging the national supervisory authorities to take certain measures. These measures must contribute to the stability and the orderly functioning of the financial markets. (Art. 10 (2))
- Where a supervisory authority does not comply with this decision, the EIOPA may adopt a decision addressed directly to an insurance institution requiring it to take the necessary action (Art. 10 (3)).

► **Safeguard Clause**

- Decisions taken by the EIOPA for settlement purposes or in emergency situations may not burden the budgets of Member States.
- Where a Member State considers that a decision by the EIOPA violates its budget autonomy, it may notify the EIOPA and the Commission thereof within one month (in the case of settlement issues), or within three working days (in case of an emergency situation). In that case, the EIOPA’s decision is to be suspended. (Art. 23)
- Finally, the Council is to decide by qualified majority on the decision taken by the EIOPA. Where the Council does not take a decision within ten working days (in emergency situations) or two months (in the case of settlement issues) the EIOPA’s decision applies. (Art. 23 (2) and (3))

► **Cooperation with EBA, ESMA and the European Systemic Risk Board (ESRB)**

- The EIOPA, EBA, and ESMA are to establish a “Joint Committee of the European Supervisory Authorities” (ESA). In particular, it is to ensure that the three supervisory authorities’ measures regarding financial conglomerates are, “as appropriate”, adopted in parallel. (Art. 40 and 42)
- Where a warning or recommendation by the ESRB is addressed to a national insurance supervisory authority, the EIOPA is to use the powers conferred upon it to ensure a timely follow-up by the national supervisory authorities (Art. 21 (5)).

► **Board of Appeal**

- Any natural or legal person may appeal against a decision taken by the EIOPA on the consistent application of EU supervisory rules within two months and against settlement measures or measures in emergency situations (Art. 44 and Art. 46 (1)).
- Appeals lodged have no suspensive effect, unless otherwise decided by the Board of Appeal (Art. 46 (3)).
- Decision taken by the Board of Appeal may be contested by an action brought before the European Court of Justice (Art. 47).

► **Entry into force**

The Regulation is to enter into force on 1. January 2011.

## Changes Compared to the Status Quo

- ▶ With the establishment of the EIOPA, the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) is upgraded to a European authority.
- ▶ Currently, CEIOPS is only entitled to adopt non-binding guidelines and recommendations. In future, the EIOPA is to develop a EU framework containing binding technical standards in the defined areas (see [Annex](#)).
- ▶ Until now, CEIOPS did not have authorities in establishing a consistent application of EU supervisory rules, nor to act in settlements or in emergency situations. In future, EIOPA will be able to take decisions in these matters.
- ▶ Unlike CEIOPS, the EIOPA will in future be conferred the power to address binding individual decisions to insurance institutions.

## Statement on Subsidiarity

The Commission emphasizes that despite the establishment of EIOPA the focal point of the daily supervision of insurances remains at national level. According to the Commission, this is in line with the principle of subsidiarity.

## Policy Context

On 25. February 2009, the expert group headed by Jacques de Larosière submitted its report on the financial crisis, in which far-reaching measures were called for [see [CEP Statement of Principles](#)]. Thereupon, in March the Commission announced the establishment of a European System of Financial Supervision [Communication COM(2009) 114] and substantiated its plans in May [Communication COM(2009) 252; see [CEP Policy Brief](#)]. In June 2009, the ECOFIN Council and the European Council agreed to these plans, but stressed that decisions taken by European supervisory authorities “must not in any way affect the budgetary competence of Member States.”

## Legislative Procedure

23.09.09	Adoption by Commission
02.12.09	Debate in the Council
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

## Options for Influencing the Political Process

Leading Directorate General:	Internal Market and Services
Committees of the European Parliament:	Economic and Monetary Affairs (in charge), rapporteur Peter Skinner (UK, S&D Group); Budgets; Employment and Social Affairs; Legal Affairs; Constitutional Affairs
Committees of the German Bundestag:	open
Decision mode in the Council:	Qualified majority (approval by a majority of Member States and at least 255 out of 345 votes; Germany: 29 votes)

## Formalities

Legal competence:	Art. 114 TFEU (Internal Market; ex-Art. 95 TEC)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure; ex-Art. 251 TEC)

# ASSESSMENT

## Economic Impact Assessment

### Ordoliberal Assessment

**The establishment of the EIOPA** reflects the attempt to coordinate and harmonise national supervisory structures for insurances across the EU. In view of closely tied international financial markets this **is to be welcomed**. However, EIOPA’s activities are restricted to the scope of the aforementioned Directives. Furthermore, it is composed of national insurance supervisors. A strong national feedback is therefore already preprogrammed. **In fact, there will be – and rightly so – no real centralisation of insurance supervision at EU level.** Given enormous differences between national supervisory structures, this would not be feasible in the medium term. Nevertheless, EIOPA will possess substantial powers which, when viewed overall, are convincing only in part:

**The binding technical standards to be developed by the EIOPA** contribute to the establishment of a consistent European set of rules (“common rulebook”). They help to **minimise distortions in the common internal market** for financial services **and prevent a “race to the bottom”**, in that national authorities no longer deliberately relax supervisory standards to increase the competitiveness of their financial centres.

**The EIOPA’s power to enforce EU supervisory rules** within the 3-step mechanism **and to give direct orders to insurance institutions is, however, problematic**. Since where representatives of national supervisory authorities decide whether or not the conduct of “colleagues” is compatible with EU-law, national interests jeopardise decision-making processes. This is all the more serious when one considers that the EIOPA may give direct orders to insurance institutions, and the appeal against these orders has no suspensive effect. As a result, insurance companies are in danger of falling victim to national interests. Since infringement proceedings initiated by the

Commission would take far too long and therefore are impracticable, independent courts should deal with the infringement of EU supervisory rules by supervisory authorities (e.g. in expedited procedures).

With the **EIOPA's settlement right**, the national supervisory authority in the home country of an insurance company operating at cross-border levels – which currently has the last word in supervisory colleges – could be driven from power by the EIOPA. This **is inappropriate**, for on the one hand it does not contribute to the consistent common rulebook; this is already given by the technical standards. And on the other hand, it is also not suitable as an instrument to enforce EU supervisory rules due to EIOPA's lack of neutrality.

**The powers conferred upon EIOPA for emergency situations are not efficient.** Though they should entitle EIOPA to obligate national supervisory authorities to take certain measures, such measures will inevitably have a negative impact on the budgets of Member States – even more so in times of crisis. However, it is precisely this that the Regulation is to prohibit, granting Member States the right of objection with the legal consequence that the EIOPA measure is suspended. In times of crisis such a waste of valuable time could have disastrous effects.

#### Impact on Efficiency and Individual Freedom of Choice

The new technical standards reduce the costs for supervision, particularly in the case of insurance companies operating at cross-border level.

#### Impact on Growth and Employment

Not evident.

#### Impact on Europe as a Business Location

The cooperation between supervisory authorities within the EIOPA strengthens the stability of financial markets and thereby the attractiveness of Europe as a business location. On the other hand, due to the close global interconnections between financial markets the stability of the European financial market depends equally on the quality of supervision in other parts of the world.

## Legal Assessment

### Legislative Competence

The legislative competence for the establishment of authorities is laid down in Art. 114 TFEU (ex-Art. 95 TEC) [see [CEP Expertise](#), *in German only*].

### Subsidiarity

Unproblematic.

### Proportionality

Unproblematic.

### Compatibility with EU Law

The EIOPA's right of final decision in emergency situations and settlement procedures is not compatible with EU-law, according to the Meroni Decision by the ECJ (Case 9/56). Pursuant to that decision, only institutions which are quoted in the TFEU (formerly: TEC) may have such powers conferred upon them. However, it is unclear as to whether or not the Meroni Decision, which affected the granting of subsidies, is applicable to EIOPA. Transferring the right of final decision to the Commission, however, would run counter to the declared intention of separating the supervisory authority from political bodies in order to ensure its independence.

### Compatibility with German Law

The EIOPA may take decisions affecting the budget of a Member State; on its own, the Member State is not able to prevent this. With the Regulation, Member States would, in part, abandon their budget rights. This would have a direct impact on the powers of the German Bundestag and therefore is subject to the parliamentary reservation right stipulated in the German Federal Constitutional Court's Lisbon Verdict (cp. BVerfG, 2 BvE 2/08 of 30.06.2009, para.-no. 256). **The German approval of the Regulation should therefore not be given without a prior approval by the German Bundestag.**

## Alternative Action

The Proposal can be substantially improved only if the Member States are ready to conclude clear preliminary agreements on the sharing of the financial burdens following from EIOPA decisions. However, it seems there is no real political will for that, although the already existing close international ties between financial markets urgently requires a European integration of supervision activities.

## Possible Future EU Action

Not foreseeable.

## Conclusion

The establishment of the EIOPA and the subsequent closer coordination of insurance supervision is reasonable. The EIOPA's technical standards can minimise the distortion of competition and improve the quality of supervision. The EIOPA should, however, not be responsible for the application of EU supervisory rules. Besides, the EIOPA's role as arbitrator is not compatible with the activities of supervisory colleges. Finally, in emergency situations the EIOPA does not have sufficient power to be effective.