

EUROPEAN PARLIAMENT

2004



2009

Committee on Legal Affairs

2007/0143(COD)

1.4.2008

DRAFT 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 legal affairs committee:

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 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).

However, it is also clear that supervisors must not be penalised for making the wrong decision or be impeded in their jobs, so it is reasonable for liability to be limited to relatively rare instances of gross negligence or bad faith. A mechanism for reparation could be included in more general compensation or guarantee schemes.

Court treatment of SCR and MCR

There are several outstanding proposals for the calculation of MCR. Some prefer the method of calculation to be independent of the SCR computation. Given that the asset and liability risk are both important and that the method of calculating the SCR has been devised to be the best measure of that, it seems optimal for that best method of calculation to be used. If the MCR is, or incorporates, a fixed percentage of the SCR that will also ensure that they stay in proper relation to one another to serve their purpose for sequential triggering of the associated supervisory interventions.

In some instances, such as for winding up procedures, it may be necessary for supervisors to take matters to court or other legal challenges relating to capital may arise. On the one hand it is necessary for all the capital calculations and the models to be as transparent and understandable as possible, but it will always take experts to verify the details to the courts. Therefore presentation to the court does not seem to be a reason to accept a simpler, less relevant computation. It may be appropriate for Member States to consider measures so that courts accept SCR and MCR calculations that have been through the supervisory approval procedure, given that this will have involved supervisors from home and host Member States in the case of group supervision.

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

Draft legislative resolution Recital A (new)

Draft legislative resolution

Amendment

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,

Or. en

Amendment 2

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;***

Or. en

Amendment 3

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.

Or. en

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 4

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.***

Or. en

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 5

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 harmonised 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 linked to the Solvency Capital Requirement as a percentage thereof.*** Both capital requirements should be harmonised throughout the Community in order to achieve a uniform level of protection for policyholders.

Or. en

Justification

The purpose of the SCR is ultimately to act as an early warning signal to both supervisors and companies that if breached will result in enhanced supervisory involvement. The MCR acts as a last level of intervention that hopefully will be avoided through the SCR alert. It should be risk sensitive so as to adequately reflect the true risk of the company and thus exposure of risk to policyholders and the best calculation of risk is provided by the SCR.

Amendment 6

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.

Or. en

Justification

Supervisors would essentially be a College.

Amendment 7

Proposal for a directive

Recital 95 a (new)

Text proposed by the Commission

Amendment

(95a) Given the increasingly cross-border nature of insurance business, and with cross-border supervision, it is appropriate for there to be cross-border guarantee schemes that take account of the supervision structures. Further work to that end is necessary but beyond the scope of this Directive,

Or. en

Justification

Work is underway on insurance guarantees schemes with a Commission consultation in the pipeline.

Amendment 8

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

Amendment

Member States shall ensure that the supervisory authorities are provided with the necessary means, ***and have the relevant expertise and capacity***, to achieve the main objective of supervision, namely the protection of policyholders and beneficiaries.

Or. en

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 9

**Proposal for a directive
Article 27 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

Member States shall recognise a right to reparation, through guarantee schemes or otherwise, exercisable against supervisory authorities or the Member State itself, in circumstances of gross negligence or bad faith.

Or. en

Justification

To provide consistency over the EU.

Amendment 10

**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, ***regardless of the importance of the undertaking concerned for the overall financial stability of the market.***

Or. en

Justification

All businesses should be regulated. Those of great importance may receive greater attention due to their 'nature', but omitting this wording (present in the corresponding recital 14) may indicate selective supervision is envisaged.

Amendment 11

**Proposal for a directive
Article 36 – paragraph 6 a (new)**

Text proposed by the Commission

Amendment

6a. Member States shall ensure that their courts accept Minimum Capital Requirement and Solvency Capital Requirement values that have been established through the supervisory processes, unless those values are manifestly wrong.

Or. en

Justification

To simplify court proceedings, for example for winding up, it should not be necessary to prove calculations that have been accepted by experts.

Amendment 12

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

Amendment

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

Or. en

Justification

To ensure proper resource and knowledge.

Amendment 13

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***;

Or. en

Justification

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

Amendment 14

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.***

Or. en

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 15

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.

Or. en

Justification

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

Amendment 16

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***;

Or. en

Justification

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

Amendment 17

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.

Or. en

Justification

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

Amendment 18

Proposal for a directive

Article 127

Text proposed by the Commission

1. The Minimum Capital Requirement

Amendment

1. The Minimum Capital Requirement

shall be calculated in accordance with the following principles:

(a) it shall be calculated in a clear and simple manner, and in such a way as to ensure that the calculation can be audited;

(b) the Minimum Capital Requirement shall correspond to an amount of eligible basic own funds below which policyholders and beneficiaries are exposed to an unacceptable level of risk if insurance and reinsurance undertakings were allowed to continue their operations;

(c) the level of the Minimum Capital Requirement shall be calibrated to the Value-at-Risk of the basic own funds of an insurance or reinsurance undertaking subject to a confidence level in the range of 80% to 90% over a one-year period;

(d) it shall have an absolute floor of 1 000 000 EUR for non-life insurance and reinsurance undertakings and 2 000 000 EUR for life insurance undertakings.

2. Insurance and reinsurance undertakings shall calculate the Minimum Capital Requirement at least ***quarterly*** and report the results of that calculation to supervisory authorities.

shall be ***calibrated as a percentage of technical provisions based on 33% of the last Solvency Capital Requirement approved by the supervisor; the level of the Minimum Capital Requirement shall be calibrated to the value-at-risk of the basic own funds of an insurance or reinsurance undertaking subject to a confidence level of 80% over a one-year period.***

In addition, it shall be calculated in accordance with the following principles:

(a) it shall be calculated in a clear and simple manner, and in such a way as to ensure that the calculation can be audited;

(b) the Minimum Capital Requirement shall correspond to an amount of eligible basic own funds below which policyholders and beneficiaries are exposed to an unacceptable level of risk if insurance and reinsurance undertakings were allowed to continue their operations;

(d) it shall have an absolute floor of 1 000 000 EUR for non-life insurance and reinsurance undertakings and 2 000 000 EUR for life insurance undertakings.

2. Insurance and reinsurance undertakings shall calculate the Minimum Capital Requirement at least ***annually*** and report the results of that calculation to supervisory authorities.

2a. The supervisory authorities shall have the right to request that they be provided with the Minimum Capital Requirement calculations more frequently.

Or. en

Justification

The MCR calculation should use the best computations of all risk, i.e. the SCR. In the interest of better regulation it is more important to have proper and thorough annual account reporting. There is also a question of capacity and resources on the part of the supervisor in receiving quarterly reports. However, they should have the right to request more should they deem it necessary, for example if an undertaking causes concern or is rapidly changing or expanding.

(Also see recital 35)

Amendment 19

Proposal for a directive

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

Text proposed by the Commission

Amendment

Supervisors may take account of whether the relevant institutions dealing in unregulated or alternative investment instruments adhere to voluntary codes of conduct and transparency.

Or. en

Justification

To encourage use of codes of conducts such as for hedge funds and private equity and encourage and enable full understanding of investments by supervisors.

Amendment 20

Proposal for a directive

Article 131 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(2a) Paragraph 1 shall be without prejudice to requirements which may be laid down by the supervisory authorities of the Member State of the commitment in the public interest in relation to assets or reference values to which policy benefits may be linked where the investment risk is borne by the policyholders.

Justification

At the moment under the Consolidated Life Directive supervisory authorities are able to set rules over what assets can be linked to unit-linked insurance contracts (ie. UCITS-like products). It is important that this link remains so as to avoid cross-sectoral implications where, for example, stricter rules apply to UCITS than non-ucits investment schemes as to what these units can be linked to.

Amendment 21**Proposal for a directive****Article 142 – paragraph 1 – introductory part***Text proposed by the Commission*

1. The supervisory authority of the home Member State shall withdraw an authorisation granted to an insurance or reinsurance undertaking in the following cases:

Amendment

1. The supervisory authority of the home Member State, ***whilst continuing any necessary supervision***, shall withdraw an authorisation granted to an insurance or reinsurance undertaking in the following cases:

Or. en

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

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.

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.***

Or. en

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 between subsidiaries is utilised, legally enforceable contracts or other mechanisms shall be in place to ensure the right to move capital and/or to provide subordinated loans or cross-guarantees, unless such movement of capital or lending is manifestly wrong or would itself cause a breach of the Minimum Capital Requirement of the subsidiary from which group support was sought;

Or. en

Justification

Subsidiary to subsidiary transfer will require mutual contractual obligations. Precedents for this exist.

Amendment 24

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.

Or. en

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 25

Proposal for a directive

Article 253 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Without prejudice to their respective responsibilities, those authorities, whether or not established in the same Member State, shall provide one another with ***any essential or relevant*** information ***which may allow or*** facilitate the exercise of the supervisory tasks of the other authorities

Without prejudice to their respective responsibilities, those authorities, whether or not established in the same Member State, shall provide one another with ***all*** information ***so as to*** facilitate the exercise of the supervisory tasks of the other authorities under this Directive. In this

under this Directive. In this regard, the supervisory authorities concerned and the group supervisor shall communicate ***on request*** all ***relevant*** information ***and shall communicate*** on their own initiative ***all essential information***.

regard, the supervisory authorities concerned and the group supervisor shall communicate all information on their own initiative.

Or. en

Justification

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, so as to constitute a proper College.

Amendment 26

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.

Or. en

Justification

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

Amendment 27

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), 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.

Or. en

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.