

To: ESAs Review Project Group
From: ECOFIN Department
Date: 15-09-2017
Reference: ECO-ESA-17-046

Subject: Summary and preliminary views on leaked EC proposal

Summary

The secretariat has reviewed the leaked draft proposal for the ESAs Omnibus Directive (shared with members in [ECO-ESA-17-044](#)) and summarised the key proposals for members' convenience. Please bear in mind that this is a preliminary assessment of a leaked version of the text, which will be subject to further changes.

The secretariat aims to follow-up with a more thorough analysis once the final proposal is published. In the meantime, members are invited to share any preliminary views or corrections with ecofin@insuranceeurope.eu and rasmussen@insuranceeurope.eu.

Background

Setting against Insurance Europe's key positions conveyed to the European Commission's (EC) consultation (see [ECO-ESA-17-038](#)), the secretariat has drafted a summary including preliminary observations (in frame) of the leaked draft proposal for the ESAs Omnibus Directive (see [ECO-ESA-17-044](#)).

- **On structure:** EIOPA to remain as a stand-alone insurance supervisor, responsible for both prudential and conduct of business oversight.

The fact that no major changes on structure are proposed in the leaked documents reflects the information the secretariat had received informally over the past weeks. This is positive from the secretariat's perspective.

- **On new/refined powers:** EIOPA's powers and role to be increased significantly, eg in relation to
 - *supervisory colleges:* EIOPA to lead activities, eg on-site examinations of insurance groups
 - *internal models:* NCAs to maintain the responsibility for approvals, however, EIOPA's involvement to be strengthened for both single entity and group models (and model changes), for example
 - EIOPA to receive entity-specific documentation related to applications
 - EIOPA to issue opinions on specific approvals (group supervisor must comply or explain)
 - EIOPA to issue guidelines on internal models
 - EIOPA to report to EU institutions (including on divergence in internal models in the EU) with sight of inclusion of internal models in the Solvency II 2020 review

Whereas it is positive that EIOPA is not planned to take over the approval of internal models in full, there is increase in powers related to supervisory colleges and significantly stronger involvement in the approval processes. The inclusion of internal models in the Solvency II 2020 review and EIOPA's explicit role in the ex-ante assessment may be of concern.

- *direct information collection from the industry: via "simple request" or "decision" in scenarios where NCAs do not adequately deliver requested information, EIOPA to enforce these requests via fines (basic amount between EUR 50 000 and EUR 200 000)*
- *outsourcing and risk transfer to third-country entities*
- *the issuance and enforcement of a strategic supervisory plan*

These appear to be new powers that had not been explicitly discussed previously. These powers would be introduced for all three ESAs. The enforcement framework to be implemented in case of non-compliance with EIOPA's requests for information to individual entities needs to be assessed further and could potentially prejudice the enforcement of any future direct supervisory tools. The leaked draft appears to contain a requirement for entities to notify to NCAs (about outsourcing and risk transfer to a branch or entity based in a third country) and extensive direct supervisory powers for EIOPA in that area.

- *in-depth thematic reviews of market conduct and development of retail risk indicators*
- *annual Union-wide assessment of market developments and publication of results for each participating financial institution*

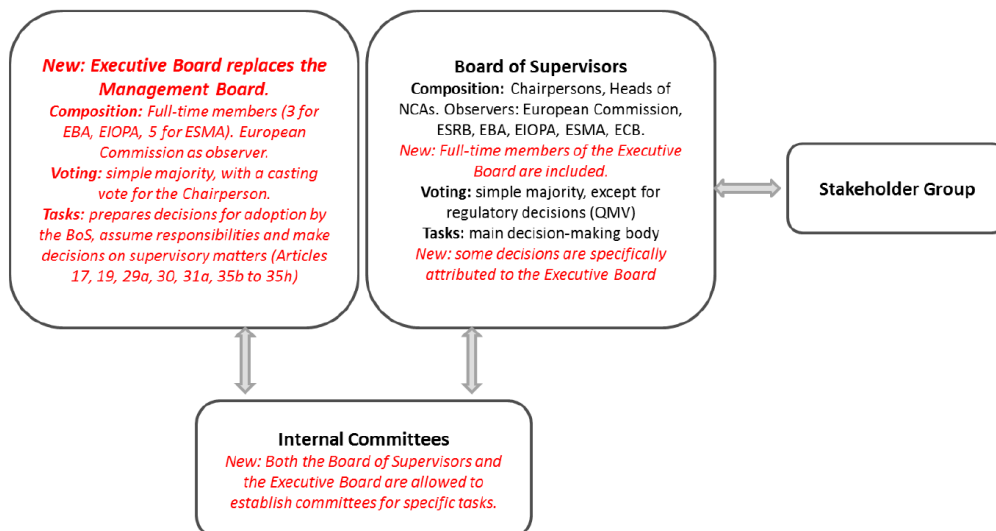
Both amendments would empower EIOPA to work broadly independently in these areas. The secretariat believes that the proposed (at least) annual consideration of Union-wide stress-testing exercises, clear intention to strengthen the role of the European Systemic Risk Board (ESRB) across all sectors, and option to publish results on individual entities (including an explicit reference professional secrecy) are concerning.

Refinements proposed on:

- *review of national competent authorities (former "peer reviews")*
- *monitoring of supervisory development in equivalent third-countries*
- *settlement of cross-border disputes between competent authorities*
- *mechanism to limit excessive issuance of guidelines*
- *investigations of breach of Union law*

The secretariat believes that all of these proposed refinements and new powers are likely positive. These were areas in which Insurance Europe had asked for improvements.

- **On governance:** The power of the EIOPA Chairperson to be consolidated broadly. EIOPA's management board to be turned into an executive board, chaired by the Chairperson (with three full-time members), and the role of executive director to be abolished.



The secretariat believes that the potential changes proposed to the governance structure of all three ESAs is concerning. The role of the Chairperson appears to be strengthened significantly and the Chairperson's activities could be undertaken more independently. Insurance Europe's comments in the consultation over the need to increase oversight and control of Chairperson's activities seem to not have been addressed – in fact, the opposite seems to have been proposed.

- **On funding:** proposed to consist to max. 40% of EU contributions; annual industry contributions determined in procedure to be specified in delegated act; industry contributions to be collected via designated national authorities.

Despite a reduction, the EU's contribution is proposed to remain significant (capped at 40%), which the secretariat would qualify as positive. The proposal for the industry contributions via designated national authorities appears also in line with Insurance Europe's conveyed position, however the designated national authority may not be the local supervisor as was intended and the allocation methodology will be determined at European level.

- **On EIOPA's stakeholder groups:** Stakeholder groups to now have the explicit option to challenge EIOPA on guidelines and recommendations vis-à-vis the EC and issue joint opinions (together with EBA and ESMA stakeholder groups)

The secretariat would suggest that, subject to practicability, such amendments would be improvements and could potentially enhance the role of the stakeholder groups. The proposed right to challenge could help avoid excessive issuance and use of guidelines.

- **On Financial Reporting:** ESMA's role in relation to enforcement of accounting and audit standards seemingly not increased and no obvious changes to endorsement responsibilities are mentioned.

The secretariat's internal mapping exercise of stakeholder responses to the EC consultation ([ECO-ESA-17-041](#)) as well as the EC's [feedback statement](#) published after closure of the consultation indicated consensus on these points, which the EC consequently seems to have taken on board.

Next steps

- The secretariat has learned informally that the proposal could be published as from 22 September.
- Once the EC proposal is published, the Council and EP will commence drafting their respective positions towards the proposed Omnibus Directive.
- The secretariat aims to share an updated, detailed analysis and additional views as soon as the final proposal is published.
- A conference call for the ESAs PG will be scheduled soon.