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Update

Cross-border consolidation in the financial services sector:

Revision of the supervisory approval process in the banking, insurance and securities' field

The purpose of this note is:

To update EIOPC members on the ongoing review of Articles 15 of Directive 2002/83/EC and Directive 92/49/EEC and Articles 19 – 23 Directive 2005/68/EC and the corresponding Articles in the banking sector (Article 16 of the Banking Directive 2000/12/EC) and in the securities' sector (Art. 10 of the Markets in Financial Instruments Directive 2004/39/EC)

1. BACKGROUND

As EIOPC Members were informed in December, the Presidency conclusions from the Ecofin meeting on 8 November 2005 offered support for the Commission's ongoing review of Article 16 of the Banking Directive 2000/12/EC and the corresponding articles of the insurance Directives (Articles 15 of Directive 2002/83/EC and Directive 92/49/EEC and Articles 19 – 23 Directive 2005/68/EC). The Ecofin conclusions also emphasised the need for consistency across financial services sectors in the prudential rules that apply to mergers and acquisitions.

Following the Ecofin Presidency conclusions, it was considered to review the provisions in the securities and the insurance sectors at the same time as the banking sector. Discussions were held in the European Securities Committee (ESC) and in the European Insurance and Occupational Pensions Committee (EIOPC) in November and December 2005. As EIOPC Members will recall, these discussions indicated support for a cross-sectoral approach. Hence, it was decided to proceed with the project as a joint initiative across the three sectors.

Naturally, work in the banking sector was at that time at a much more advanced stage than in the other sectors. However, since the decision was taken to make the review cross-sectoral, considerable work has been carried out in the insurance and securities' sectors to present new texts of the relevant articles along the same line as in the banking sector. Draft texts have been drawn up for all three financial sectors. A joint cross-sectoral working group, which is formally a sub-group of the EBC, was also established. The Group held its first meeting on 3 February 2006. This meeting was very constructive and substantial progress was made. Following that meeting, Member States were invited to send written comments to the draft texts. As a consequence, the Commission Services circulated new draft texts on 27 February 2006. Member States were invited to comment on these texts by 6 March 2006.

As emphasised in EIOPC in December 2006, this exercise is independent from the Solvency II project. However, CEIOPS' advice on the call for advice on fit and proper issues will of course feed into the Solvency II process, as envisaged.

2. KEY AREAS IN THE DISCUSSION

The Commission Services are reviewing the comments received from the revised draft texts circulated on 27 February 2006, and will further revise the texts in order to reflect the comments received. At this stage, the texts are still being revised and refined, but two particular areas of discussion should be highlighted:

- The number of days within which the supervisory review takes place and whether or to what extent the clock may be stopped by the supervisor during the process;
- The draft text contains a right for the Commission to access the documents used by the supervisors in the approval process. It should be emphasised that this provision does not aim at 'second-guessing' supervisory decisions. The Commission is not the 'supervisor of the supervisors'. However, implementation and enforcement of Community law are key priorities in the financial sector for the coming years and appropriate provisions must be in the text to allow the Commission to exercise its powers as far as the enforcement of European legislation is concerned. Needless to say, the Commission agrees with the need for strictly defined confidentiality obligations as regards the scope and use of the information concerned. Moreover, the Commission's powers should apply only in well-defined and limited cases.

3. THE WAY FORWARD

The Commission Services are currently working on an Impact Assessment that will accompany the formal proposals. Moreover and in line with the Commission's commitment to better regulation, a public consultation has been launched. All stakeholders are invited to participate; details may be found at the following website:

http://europa.eu.int/comm/internal_market/finances/cross-sector/consultation_en.htm

The public consultation will be open until 19 April 2006.

The results of the consultation will feed into the overall review project and the ongoing impact assessment. In relation to the impact assessment and the public consultation it should be emphasised that these are and will be proportional to the review and changes proposed. Any proposed revisions of the provisions relating to supervisory assessments of qualifying shareholdings do not envisage changing supervisory powers. Instead they seek to clarify existing powers, enhance the transparency of the process and procedures, improve supervisory convergence in the application of the rules, and to set out how supervisors should co-operate in instances of cross-border transactions. As such, the public consultation is focused on the existing rules and, whether or, to what extent market participants believe that the existing rules could be improved. The impact assessment will also reflect the limited scope of this review, being proportionate to any changes proposed.

The Commission is committed to present a formal proposal to amend the relevant legislative provisions in the banking, insurance and securities sectors regarding the supervisory assessments of qualifying shareholdings. A formal proposal by the Commission was, as far as the original banking project was concerned, scheduled for summer 2006. The Commission Services are working intensively to endeavour to meet this original timetable, but given the complexity of expanding the work to include insurance and securities, the original timetable may come under pressure.

Question to EIOPC Members

- *Do you have any general comments?*

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