

Az Európai Unió Hivatalos Lapjában (2010. augusztus-szeptember) a pénzügyi szolgáltatások szektorral kapcsolatban az Európai Bizottság honlapján közzétett hírek

Tartalomjegyzék:

Az Európai Unió Hivatalos Lapja - L (Jogsabályok)

Sorszám	Cím	Oldalszám
1.	A BIZOTTSÁG HATÁROZATA (2010. szeptember 28.) Japán jogi és felügyeleti keretrendszerének a hitelminősítő intézetekről szóló 1060/2009/EK európai parlamenti és tanácsi rendelet követelményeivel való egyenértékűségének elismeréséről	1

Sajtóbejelentések

Sorszám	Cím	Oldalszám
1.	Statement of the European Commission following the final agreement on financial supervision reform	2
2.	Financial Supervision Package - Frequently Asked Questions	3
3.	New framework to increase transparency and ensure coordination for short selling and Credit Default Swaps	10
4.	Commission proposal on OTC Derivatives and Market infrastructures – Frequently Asked Questions	11
5.	Proposal for a Regulation on Short Selling and Credit Default Swaps - Frequently asked questions	17
6.	Revision of the Financial Conglomerates Directive - Frequently Asked Questions	33
7.	Commission urges insurance companies to participate in the Solvency II Quantitative Impact Study (QIS5)	36

Jogsabályok

1.

Jogsabály:

A BIZOTTSÁG HATÁROZATA (2010. szeptember 28.) Japán jogi és felügyeleti keretrendszerének a hitelminősítő intézetekről szóló 1060/2009/EK európai parlamenti és tanácsi rendelet követelményeivel való egyenértékűségének elismeréséről

Megjelent:
L254 (09.29.)

Jogforrás tartalma:

A Bizottság határozata alapján a hitelminősítő intézetekkel kapcsolatos japán jogi és felügyeleti keretszabályozást az 1060/2009/EK rendeletben meghatározott követelményekkel egyenértékűnek kell tekinteni.

Sajtóbejelentések

1.

MEMO/10/436

Brussels, 22 September 2010

Statement of the European Commission following the final agreement on financial supervision reform

Following the vote in the European Parliament on the financial supervision reform package the President of the European Commission, José Manuel Barroso stated:

"The banking crisis exposed the gaps in financial services supervision in Europe. Our market was interdependent but oversight was purely national. In response I asked Jaques De Larosière to come with a vision which the Commission then turned into concrete proposals with an ambitious timetable. Today's final agreement - which comes less than year after the Commission's proposals - means the new system will be up and running from January 2011. The European Systemic Risk Board will spot systemic risks and launch action to stop them becoming real threats to our economy. The three new Authorities will work with national supervisors to improve the day to day oversight of individual firms. With this reform Europe is the first region in the world to put in place top-notch supervision that is up to the challenges of the future."

Commissioner for the Internal Market and Services Michel Barnier added:

FR: "Nous avons travaillé pour que l'Europe tire la première grande leçon de la crise, celle de la faillite d'une supervision appropriée. L'accord d'aujourd'hui représente un moment fondamental pour l'évolution de la réglementation financière en Europe. C'est la base même qui crédibilise toutes les initiatives sectorielles que nous prenons. L'ensemble de ces initiatives devra permettre d'éviter la récurrence de crises sévères, protéger les consommateurs qui sont aussi des contribuables et nourrir une croissance économique équitable et durable."

EN: "We have worked so that Europe learns the first important lesson of the crisis, that of the failure of appropriate supervision. Today's supervision is a fundamental moment for the evolution of financial regulation in Europe. It is the foundation which gives credibility to the sectoral initiatives we are taking. These initiatives should allow us to avoid severe crises recurring, to protect citizens who are also taxpayers, and to contribute to fair and sustainable growth."

Commissioner for Economic and Monetary Affairs Olli Rehn said:

"Macro-prudential supervision was clearly the weakest link of the pre-crisis framework."

The creation of the ESRB is a decisive and innovative step towards a stronger and more stable financial system."

2.

MEMO/10/434

Brussels, 22 September 2010

Financial Supervision Package - Frequently Asked Questions

1. Why is reform of financial supervision needed?

Following the onset of the crisis, Commission President Barroso summoned a high level group of experts in financial services in October 2008 to advise on the future of European financial regulation and supervision.

Chaired by Jacques de Larosière, former President of the European Bank for Reconstruction and Development, the group identified some serious shortcomings in the existing system of financial supervision in Europe. There is a Single Market, they said, and financial institutions operate across borders, but supervision remains mostly at national level, uneven and often uncoordinated.

They concluded that a stronger financial sector in the EU in the future needed to have convergence between Member States on technical rules, and a mechanism for ensuring agreement and co-ordination between national supervisors of the same cross-border institution or in colleges of supervisors. A rapid and effective mechanism to ensure consistent application of rules would also be necessary, as well as co-ordinated decision-making in some areas in emergency situations. They concluded the current advisory financial services committees was not sufficiently equipped to carry out these functions.

Based on this report, the European Commission brought forward proposals in September 2009 ([see IP/09/1347](#)). On 22 September 2010, the European Parliament – following agreement by all Member States - voted through a new supervisory framework for financial regulation in Europe that will come into force in January 2011.

2. What is the current situation?

There are already three financial services committees at EU level, but in contrast to the new European Supervisory Authorities (ESAs) that will now be established, these committees have advisory powers and can only issue non-binding guidelines and recommendations. National supervisors of cross-border groups must co-operate within colleges of supervisors, but if they cannot agree, there is no mechanism to resolve issues. Many technical rules are determined at Member State level, and there is considerable variation between Member States. Even where rules are harmonised, application can be inconsistent. This fragmented supervision undermines the Single Market, imposes extra costs for financial institutions, and increases the likelihood of failure of financial institutions with potentially additional costs for taxpayers.

3. What are the key elements of the new European financial supervisory framework?

This framework will consist of a new European Systemic Risk Board (ESRB) and three new European Supervisory Authorities (ESAs) for the financial services sector: A European Banking Authority (EBA) based in London, a European Insurance and Occupational Pensions Authority (EIOPA) in Frankfurt and a European Securities and Markets Authority

(ESMA) in Paris. The new authorities will be made up of the 27 national supervisors. This framework is to give Europe the control tower and the radar screens it needs to detect the risks which can accumulate across the financial system as we witnessed in the run up to and at the height of the financial crisis.

Figures and graphics available in PDF and WORD PROCESSED

Figure 1: Outline of the new European supervisory framework

4. How will the new European supervisory authorities work?

A European Systemic Risk Board (ESRB) will be established which will monitor and assess potential threats to financial stability that arise from macro-economic developments and from developments within the financial system as a whole ("macro-prudential supervision"). To this end, the ESRB will provide an early warning of system-wide risks that may be building up and, where necessary, issue recommendations for action to deal with these risks. The creation of the ESRB will address one of the fundamental weaknesses highlighted by the crisis, which is the vulnerability of the financial system to interconnected, complex, sectoral and cross-sectoral systemic risks.

The three new European Supervisory Authorities (ESAs) will work in a network and in tandem with the existing national supervisory authorities to safeguard financial soundness at the level of individual financial firms and protect consumers of financial services ("micro-prudential supervision"). The new European network will combine nationally based supervision of firms with strong coordination at European level so as to foster harmonised rules as well as coherent supervisory practice and enforcement.

The European Authorities will have the power to:

- draw up specific rules for national authorities and financial institutions;
- develop technical standards, guidelines and recommendations.
- monitor how rules are being enforced by national supervisory authorities (NSAs)
 - take action in emergencies, including the banning of certain products;
 - mediate and settle disputes between national supervisors,
 - ensure the consistent application of EU law, and
 - where necessary, the new Authorities will have the possibility of settling disagreements between national authorities, in particular in areas that require cooperation, coordination or joint decision-making by supervisory authorities from more than one Member State.

Mechanisms, such as Joint Committees, will be introduced to ensure agreement and coordination between national supervisors of the same cross-border institution or in colleges of supervisors. For example, the European Banking Authority (EBA) and the new European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) are to form a Joint Committee (see figure 2) to oversee cooperation and coordination between national supervisors in the case of financial conglomerates (see MEMO/10/376).

Finally, the ESMA will be entrusted with direct supervisory powers over credit rating agencies registered in the EU and have the power to request information, to launch investigations, and to perform on-site inspections. Further powers may be transferred to the new European Supervisory Authorities in the future, in particular in the area of financial

infrastructures, but only if Member States and the European Parliament agree to do so (see question 14 for more detail).

Figures and graphics available in PDF and WORD PROCESSED

Figure 2: the European Supervisory Authorities will work closely with the national supervising authorities (NSA)

5. Is it not the case that the activities of the Authorities have been broadened, but the actual powers have been reduced?

No. The activities of the Authorities have indeed been widened but they will retain teeth, i.e. they will still have binding decision-making powers vis-à-vis national authorities and, in certain circumstances vis-à-vis financial institutions too. They will be able to arbitrate between national authorities and propose technical standards to form a common rulebook.

6. How does the new supervisory architecture fit in with other financial reforms?

In response to the crisis, and drawing the lessons from it, the Commission is bringing forward a comprehensive set of proposals to tackle various legislative gaps which contributed to the last financial crisis. These were set out as a global package of reforms in June 2010 in a Communication called “Regulating financial services for growth” which can be found at:

http://ec.europa.eu/internal_market/finances/docs/general/com2010_en.pdf

The package of reforms was endorsed by all European heads of state and government and is consistent with the EU’s G20 commitments.

The aim is for this package of reforms to be adopted by the legislature by the end of 2011, so that they can enter into force by the end of 2012.

The reform of the supervisory architecture is the lynchpin of this programme, and without the new European Authorities in place, many of our planned reforms would not be able to have their full effect.

7. Who will ultimately benefit from these financial reforms?

The result of the negotiations will be a stronger, safer and sounder financial system in Europe. The ultimate winners will be the people and businesses of Europe, as they will have their money better looked after. The new framework should also make Europe a more attractive place for investors and financial institutions as it will be a sounder and more secure level-playing field.

8. What are the main differences between the final version and the Commission's original proposals?

The broad thrust of the original Commission proposal is reflected in the final compromise. From the Commission’s perspective, some elements of the final compromise are improvements compared to the original proposals, for example the possibility for the new Authorities to temporarily ban or restrict certain financial activities, such as short selling for example, in emergency situations. This is an important development which will help foster greater financial stability.

9. What is the "single rule book" and how will new technical standards contribute to it?

In order to strengthen the reforms of the European supervisory architecture, a single European rulebook is needed. This should provide a common legal basis for supervisory action in the EU - ensuring strengthened stability, equal treatment, lower compliance costs for companies as well as removing opportunities for regulatory arbitrage. Such efforts do not require full harmonisation of all aspects of EU legislation, but rather focus on one harmonised core set of key standards.

To this end, differences in the national transposition of EU law stemming from exceptions, derogations, additions or ambiguities in current directives must be identified and removed, so that this core set of key standards can be defined and applied in a harmonised manner throughout the EU by all supervisors. The new European Supervisory Authorities should contribute to this process by developing technical standards.

Technical standards could determine for example the formats in which financial institutions have to report information to the supervisors (this would be a big improvement for cross-border companies who currently have to comply with different rules in every Member State they operate in), or the procedures according to which national supervisors will cooperate. A single European rulebook composed of such harmonised technical standards should provide a common legal basis for supervisory action in the EU - ensuring strengthened stability, equal treatment, lower compliance costs as well removing possibilities for regulatory arbitrage.

10. Isn't the procedure for adopting technical standards almost as complicated as full legislation now?

No – it can be very simple: the Authorities – whose Boards are made up of the supervisors of each Member State - prepare a draft, and the European Commission can adopt that draft without any modifications. In some cases this is the end of the procedure, in others the standards can only enter into force if Member States and the European Parliament do not object to them within three months.

11. Can the new European Authorities order a Member State to bail out a bank?

No. This is precisely the kind of decision which could have major fiscal consequences for a Member State and could be prevented by the fiscal safeguard clause described in the question below.

12. Does this mean the end of supervision at national level? Are these reforms a first step towards full-fledged European supervision?

No, day-to-day supervision is best done at national level, close to the ground, where appropriate expertise can be found. There will always be a pivotal role for national supervisors. The proposed system is a "hub and spoke" type of network of EU and national bodies. The new authorities will act only where there is clear added value, and the areas where the authorities can act will be strictly defined by Member States and the European Parliament in co-decision. The objective is for European and national bodies to work hand in hand.

The new system has been designed in a way that it can be adapted to future developments in financial services. Every three years the Commission will publish a wide-ranging report on the functioning of the new Authorities and assess whether further steps are needed to ensure the prudential soundness of institutions, the orderly functioning of markets and thereby the protection of depositors, policy-holders and investors. This may or may not lead to proposals to change the structures or tasks of the Authorities; any such proposal would have to be considered and adopted by Council and Parliament.

13. In what cases can European Authorities overrule national authorities? Will they have the possibility to give instructions directly to individual financial institutions?

The ESAs will be able to address decisions directly to national authorities in three areas: (i) in cases where they are arbitrating between national authorities both involved in the supervision of a cross-border group and where they need to agree or coordinate their position; (ii) in cases where a national authority is incorrectly applying EU Regulations (EU Regulations are directly applicable and are not transposed into national law); and (iii) in emergency situations declared by the Council.

The authorities will be able to take decisions directly applicable to financial institutions as a last resort in the three cases just referred to above where the Authority has addressed a decision to the national supervisor but the national supervisor has not complied with it. This can be done only in cases where there is directly applicable EU legislation as defined above.

14. Will the new Authorities have any direct supervisory powers?

Yes, for the supervision of credit rating agencies (CRAs). Since rating services are not linked to a particular territory and the ratings issued by a CRA can be used by financial institutions all around Europe, the Commission has recently proposed a more centralised system for supervision of Credit Rating Agencies at EU level. Under the proposed changes, the European Securities and Markets Authority (ESMA) would be entrusted with exclusive supervision powers over CRAs registered in the EU. It would have powers to request information, to launch investigations, and to perform on-site inspections.

The Regulations establishing the new European Supervisory Authorities allow them to fulfil any other specific tasks, including supervisory tasks, conferred on them by the EU legislative acts. This entails that the Council and the Parliament may in future grant further supervisory powers to the new Authorities where appropriate, on the basis of a Commission proposal. The Commission would only consider making such a proposal for pan-European entities for which there is a clear added value to EU-level supervision.

15. Can the new Authorities ban toxic or high-risk financial products?

Yes, the Authorities may temporarily prohibit or restrict certain financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in Europe in the cases specified in sectoral legislation (e.g. the proposal on short-selling) or if so required in the case of an emergency situation.

16. What is the role of the new European Supervisory Authorities in emergency situations?

It should be clear that we are talking here of emergency powers – which would only apply in exceptional circumstances (defined as a situation which seriously jeopardises the stability of financial markets).

In the great majority of cases, we expect national and European level authorities to work hand in hand – sharing information, coordinating their work and taking decisions together (for example, on technical standards across the European banking sector so banks don't have to comply with different standards in different countries: this should be of real use for banks across Europe).

Even in emergencies, the first objective of any of the three European supervisory authorities will be to facilitate and coordinate actions by national supervisors, without

binding decisions. However, if deemed necessary, there is a procedure in place for ESAs to address binding decisions to national supervisors requiring them to take the necessary action to safeguard the orderly functioning and integrity of financial markets and the stability of the whole or part of the European financial system. So, the new Authorities will have an important co-ordinating role and will be able to adopt decisions requiring supervisors to jointly take action. An example of how this power might be used would be to adopt harmonised temporary bans on short selling on EU securities markets, rather than uncoordinated actions in different Member States, as witnessed over the past years.

The new Authorities will also contribute to and participate actively in the development and coordination of effective and consistent recovery and resolution plans, guarantee schemes, procedures in emergency situations and preventative measures to minimise the systemic impact of any failure. The new Authorities should also ensure that they have a specialised and ongoing capacity to respond effectively to the materialisation of systemic risks. In doing so, they shall identify and measure the systemic risk posed by financial institutions, which shall be subject to, inter alia, enhanced supervision.

17. What is the "fiscal safeguard clause"?

The purpose of the new European supervisory system is to prevent us getting to the point reached in autumn 2008 where banks had to be bailed out. The system will save taxpayers' money by helping to make bank failures less likely in future, through supervision strengthened by the ESAs, and warnings of the European Systemic Risk Board which should be acted upon. As an additional safeguard, the Regulations establishing the new Authorities clearly prohibit them from taking any decisions which impinge on the fiscal responsibilities of Member States. In case any Member State considers that its fiscal responsibilities have been impinged upon, there is a clear and robust procedure for deciding whether this is genuinely the case, with Member States taking the final decision.

18. Who will lead the new Authorities and how will they be selected?

The Chairpersons of the new Authorities will be appointed by the Boards of the Authorities composed of the Heads of national supervisors, and confirmed by the European Parliament, after a thorough and public selection procedure – based on a short-list prepared by the European Commission. It is envisaged that the Chairpersons will be high-profile individuals with an established reputation in their field. They will be full-time officials of the Authorities, but not representatives of any Member State or European Commission appointees. Nationals of any EU Member State with the required experience may apply. The positions will be advertised after the Regulations creating the Authorities are published in the Official Journal (probably in October). The final appointment of the Chairpersons of the Authorities is expected in early spring of 2011. For the first few weeks of their existence, the deputy Chairpersons of the ESA (also Board members) will act as interim Chairpersons.

Figures and graphics available in PDF and WORD PROCESSED

Figure 3: Day-to-day management in the European Supervisory Authorities (ESAs)

19. How much will the Authorities cost and how will they be financed?

The proposed total running cost for the three Authorities in 2011 is of the order of € 40 million - though this will not all be "new" spending. This is because the three existing committees (Committee of European Banking Supervisors (CEBS), Committee of European Insurance and Occupational Pensions Committee (CEIOPS) and the Committee of European Securities Regulators (CESR)), which the Authorities will replace, already

have significant budgets and staff. In addition, €2.5 million of the total will be funded through industry fees. The total staffing levels of the Authorities will be over 150 people in 2011 and is planned to rise to around 300 after four years of operation. This figure is well below the staffing levels of most national supervisors (for example, the UK Financial Supervisory Authority has around 3 300 staff). This is appropriate, since the new Authorities will in general not be responsible for day-to-day supervision and should not duplicate work carried out by supervisors at national level.

The new Authorities will be financed through: (i) obligatory contributions from national public authorities; (ii) a subsidy from the European Union budget; and (iii) any fees paid by supervised entities to the new Authorities.

The Commission has proposed that the share of this cost for Member States and the EU budget should respectively be 60% and 40% (with costs for supervision of credit rating agencies to be recouped via fees paid by the supervised agencies). The shared funding is intended to reflect the architecture of the European System of Financial Supervisors (ESFS) which brings together a European dimension with a key ongoing role for national supervisors. It also reflects the fact that the current "financial services committees" are funded entirely by the Member States. However, these percentages are not laid down by law and can be varied by Council and Parliament each year as part of the annual budgetary process.

20. When will the new European supervisory authorities start their work?

The set-up date for the new European Supervisory Authorities is 1 January 2011: that is the date on which the existing three committees for banking, securities, and insurance and occupational pensions, located in London, Paris and Frankfurt respectively, will be transformed into EU Authorities.

21. How does this compare with what the Americans are doing in the Dodd-Frank Act?

The EU and the USA are both implementing the G20 commitments rapidly, but in a way adapted to their own legal and economic environment, thus making comparisons hazardous. The chosen network model for supervision in the EU is specifically intended to help to complete the internal market while respecting the principle of subsidiarity. The USA has decided to leave insurance supervision at the level of the federal states, and to keep more than one banking and securities supervisor at federal level.

Regarding financial services reform more widely, by next spring, the Commission will have proposed all the necessary elements for a fundamental improvement of the way Europe's financial markets are regulated and supervised. The last piece of legislation should be adopted by the end of 2011, allowing for national implementation by the end of 2012. In doing so, Europe is showing the same determination as the US in reforming its financial system, in a way adapted to our legal and economic environment. It may be noted that many of the reforms contained in the Dodd-Frank Act require implementing regulations in order to have their full effect, and these are scheduled over the next couple of years.

More information:

http://ec.europa.eu/internal_market/finances/committees/index_en.htm

Brussels, 15 September 2010

New framework to increase transparency and ensure coordination for short selling and Credit Default Swaps

The European Commission today adopted a proposal for a regulation on short selling and certain aspects of Credit Default Swaps (CDS). Its main objectives are to create a harmonised framework for coordinated action at European level, increase transparency and reduce risks. The new framework will mean regulators – national and European - have clear powers to act when necessary, whilst preventing market fragmentation and ensuring the smooth functioning of the internal market.

Internal Market and Services Commissioner Michel Barnier said: "In normal times, short selling enhances market liquidity and contributes to efficient pricing. But in distressed markets, short selling can amplify price falls, leading to disorderly markets and systemic risks. Today's proposal will increase transparency for regulators and markets, and make it easier for regulators to detect risk in sovereign debt markets. Regulators will also gain clear powers to restrict or ban short selling in exceptional situations, in coordination with the new European Securities and Markets Authority (ESMA). Today's proposals are a further step towards greater financial stability in Europe."

Short selling is the sale of a security the seller does not own with the intention of buying it back at a later point in time in order to deliver it. Naked short selling is where the seller has not borrowed the securities, or ensured they can be borrowed before settlement prior to the short sale. It can lead to specific risks of settlement failure (i.e. not completing the transaction). Since the onset of the financial crisis, many Member States have taken actions to suspend or ban short-selling. Uncoordinated actions can be less effective and lead to difficulties on the market, including impacting on investor confidence.

Greater transparency

At present, there is little reliable information available on short selling: it is difficult for market participants and regulators to know which securities are being traded "short" and their overall significance. Today's proposal enhances transparency by requiring that all share orders on trading venues be marked as 'short' (so-called "flagging") if they involve a short sale, so that regulators know which transactions are short. In addition, investors will have to disclose significant net short positions in shares to regulators at one threshold (0.2% of issued share capital), and to the market at a higher threshold (0.5%). These measures will mean market participants are better informed whilst allowing regulators to monitor markets and detect developing risk. Concerning sovereign bonds, regulators will be better able to detect possible risks to the stability of sovereign debt markets by receiving data on short positions, including those obtained through sovereign Credit Default Swaps (a derivative sometimes regarded as a form of insurance against the risk of default).

Clear powers for regulators and a coordinated European framework

In distressed markets, transparency alone may not be enough. At present, the powers that national regulators have to restrict or ban short selling vary greatly between Member States. Today's proposal gives national regulators clear powers in exceptional situations to

temporarily restrict or ban short selling in any financial instrument, subject to coordination by ESMA (which should be operational from January 2011 subject to agreement by the European Parliament). ESMA is also given the power to issue opinions to competent authorities when they intervene in exceptional situations. In line with the new supervision framework, ESMA will have the possibility, when certain conditions are fulfilled, to adopt temporary measures itself, with direct effect, restricting or prohibiting short selling.

In addition, if the price of a financial instrument falls by a significant amount in a day, national regulators will have the power to restrict short selling in that instrument until the end of the next trading day. These measures will help regulators take the necessary action, in a coordinated way, to slow or halt price declines which can be amplified by short selling in distressed markets. They will also reduce compliance costs for market participants which currently arise from the divergence of national rules.

Tackling the specific risks of naked short selling

Naked short selling potentially increases the risk of settlement failure. Today's proposal requires that to enter a short sale, an investor must have borrowed the instruments concerned, entered into an agreement to borrow them, or have an arrangement with a third party to locate and reserve them for lending so that they are delivered by the settlement date [at the latest 4 days after the transaction]. Trading venues must ensure that there are adequate arrangements in place for buy-in of shares or sovereign debt, as well as fines and a ban on short selling, where there is a settlement failure.

Exemptions

Certain exemptions are included in the proposal – for example for some defined activities which play an important role in providing liquidity or are essential to the proper functioning of primary bond markets.

Next steps

The proposal now passes to the European Parliament and the Council for negotiation and adoption. Once adopted the regulation would apply from 1 July 2012.

More information:

http://ec.europa.eu/internal_market/securities/short_selling_en.htm

[MEMO/10/409](#)

4.

MEMO/10/410

Brussels, 15 September 2010

Commission proposal on OTC Derivatives and Market infrastructures – Frequently Asked Questions

What are derivatives?

A derivative is a financial contract linked to the future value or status of the underlying to which it refers (e.g. the development of interest rates or of a currency value, or the possible bankruptcy of a debtor).

Over-the-Counter (OTC) derivative contracts are not traded on an exchange (for example the London Stock Exchange) but instead privately negotiated between two counterparts (for example a bank and a manufacturer). OTC derivatives account for almost 90% of the derivatives markets. In December 2009, the notional value of outstanding OTC derivatives was around \$615 trillion or €435 trillion. The OTC derivatives market comprises a wide variety of product types across several asset classes (interest rates, credit, equity, foreign exchange (FX) and commodities) with widely differing characteristics and levels of standardisation. OTC derivatives are used in a variety of ways, including for purposes of hedging, investing, and speculating. Contrary to derivatives traded on exchanges, OTC derivatives are not automatically cleared through CCPs (cf next question) or subject to reporting rules.

A hypothetical example of hedging: a plane manufacturer has a contract to build 6 planes in the next 6 months and will need 10 tonnes of steel per plane. He may want to guarantee that whatever the fluctuations in the market of the price of steel, he gets steel at a certain fixed price for the next 6 months so as to be able to deliver the planes on budget. To cover for the risk of steel rising, the plane manufacturer could enter into an OTC contract with a bank for example. They could agree on a set price for a set quantity of steel for 6 months. If, after 6 months, when the contract matures, the market price turned out to be lower, the bank would make a profit; but if the market price turned out to be higher, then the plane manufacturer would be able to purchase the steel at a price lower than the market price and thus save money.

What are market infrastructures?

Central Counterparties (CCP)

A CCP is an entity that interposes itself between the two counterparties to a transaction, becoming the buyer to every seller and the seller to every buyer. A CCP's main purpose is to manage the risk that could arise if one counterparty is not able to make the required payments when they are due –i.e. defaults on the deal.

CCPs are commercial firms. There are currently about a dozen CCPs, all but one located in Europe or the USA, clearing interest rates, credit, equity and commodities OTC derivatives. There is currently no CCP clearing FX OTC derivatives.

Trade repositories

A trade repository is a central data centre where details of derivatives transactions are reported.

Trade repositories are commercial firms. There are global trade repositories for credit, interest rate and equity OTC derivatives. Trioptima in Stockholm houses a global interest rate repository and DTCC Derivatives Repository Ltd in London houses a global equity derivatives repository and maintains global credit default swap data identical to that maintained in its New York based Trade Information Warehouse.

Why is the Commission proposing legislation on OTC derivatives?

Derivatives play an important role in the economy. But they are also associated with certain risks. The financial crisis, including the default of Lehman Brothers and the bail out of AIG, highlighted that these risks were not sufficiently mitigated, particularly in the OTC market where almost 90% of derivatives are traded. The European Commission committed to deliver, in its Communication on Driving European Recovery of March 2009, appropriate initiatives to increase transparency in the derivatives market and to address financial stability concerns.

In September 2009, at the G-20 Pittsburgh Summit, the leaders of the 19 biggest economies in the world and the European Union agreed that *"all standard OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest."* Furthermore, they acknowledged that *"OTC derivative contracts should be reported to trade repositories and that non-centrally cleared contracts should be subject to higher capital requirements."*

The Commission's proposal meets the G20 commitments on OTC derivatives markets.

What are the objectives of the proposal?

The proposal's objectives are to increase transparency in the OTC derivatives market and to make it safer by reducing counterparty credit risk and operational risk.

- **To increase transparency**, the proposal requires that i) detailed information on OTC derivative contracts entered into by EU financial and non-financial firms are reported to trade repositories and made accessible to supervisory authorities, and that ii) trade repositories publish aggregate positions by class of derivatives accessible to all market participants.
- **To reduce counterparty credit risk**, the proposal introduces (i) stringent rules on prudential (e.g. how much capital they need hold), organisational (e.g. role of risk committees) and conduct of business standards (e.g. disclosure of prices) for CCPs, (ii) mandatory CCP-clearing for contracts that have been standardised (i.e. they have met predefined eligibility criteria), (iii) risk mitigation standards for contracts not cleared by a CCP (e.g. exchange of collateral)
- **To reduce operational risk**. Operational risk is the risk of loss resulting from inadequate or failed internal processes, people and systems, or from external events. The proposal requires the use of electronic means for the timely confirmation of the terms of OTC derivatives contracts. This allows counterparties to net the confirmed transaction against other transactions and ensure accurate book keeping.

How does the proposal make the derivatives market more transparent?

Currently, there is little reliable information on what is going on in the OTC derivatives market. There are no public prices available, no public information as to who is entering deals with whom, over what period of time, relating to what underlying asset or for which amounts.

Under the Commission's proposal, detailed information on each OTC derivatives contract traded by a financial or a non-financial firm with large positions in the OTC derivatives market will have to be reported to trade repositories. The data in these trade repositories will then be available to regulators, giving them a much better overview of who owes what to whom so they can spot any potential problems early and be in a position to take action if need be. In addition, trade repositories will have to publish aggregate positions by class of derivatives, providing market participants with a clearer view of the OTC derivatives market. However, trade repositories will not publish data at trade level as the type of information is commercially sensitive.

To whom will the clearing and reporting obligations apply to?

The obligation to clear OTC derivatives contracts through a CCP and report them to trade repositories will apply to financial firms (banks – both universal banks and investment

banks, insurance companies, funds etc.) and to non-financial firms (energy companies, airlines, manufacturers etc.) that have large positions in OTC derivatives.

Are any exemptions foreseen from the clearing and reporting obligations?

The proposal provides for some limited exemptions from clearing and reporting requirements for non-financial firms.

Contracts between two non-financial firms (a fraction of total contracts) where neither firm exceeds an 'information threshold' will not need to be reported to a trade repository. All other contracts, including all contracts between non-financial firms and financial firms, will need to be reported to trade repositories.

Contracts by non-financial firms below a 'clearing threshold' will not have to be cleared through a CCP. "Commercial hedging activities", i.e. when these firms use OTC derivatives to hedge risks related to their activities, will be subtracted from the firm's overall position which means that they will not count towards the threshold set for the clearing obligation. These activities do not need to be cleared. For example, commercial hedging could be when airlines using OTC derivatives to secure the price at which they buy fuel, or when exporters who use OTC derivatives to shield themselves from fluctuations of exchange rates.

These thresholds are not set out in the proposal. ESMA, the new European Securities and Markets Authority, together with ESRB, the new European Systemic Risk Board and other relevant authorities will draft technical standards on what these thresholds should be.

When setting these thresholds, ESMA will have to take into account the systemic relevance of the sum of net position and exposures by counterparty per class of derivatives (i.e. looking at how much overall risk they pose to the system). It is envisaged that the clearing and information thresholds will be different for different asset classes and even within an asset class. For example, for commodity derivatives, the clearing threshold may be different for oil and wheat.

Members of the European System of Central Banks, public bodies charged with or intervening in the management of the public debt, and multilateral development banks will not be subject to the clearing or reporting obligations in order to avoid limiting their powers to intervene to stabilise the market, if and when required.

Which OTC derivatives contracts will be eligible for mandatory clearing?

To have as many OTC contracts as possible cleared through a CCP, the Regulation introduces two approaches to determine which contracts must be cleared:

- a 'bottom-up' approach - Where a competent authority has authorised a CCP to clear a class of derivatives, it will inform ESMA who will have the powers to decide whether a clearing obligation should apply to that class of derivatives in the EU
- a 'top-down' approach - ESMA, on its own initiative and in consultation with the European Systemic Risk Board, will identify contracts that should be subject to the clearing obligation but for which no CCP has yet received authorisation.

The 'top down' approach will ensure that if no CCP clears a product that should be subject to the clearing obligation, there are tools available to regulators to get this product cleared through a CCP. It will also ensure that new products will not fall through the net.

ESMA will use the following criteria when determining eligibility for the clearing obligation: reduction of systemic risk in the financial system, liquidity of contracts,

availability of pricing information, ability of the CCP to handle the volume of contracts, and level of client protection provided by the CCP.

Why does the proposal not envisage mandating clearing for all OTC derivatives?

Because they are customised to meet particular counterparty or end-user needs, some bespoke OTC derivatives products will not have the level of standardisation required for central clearing.

How will the proposal reduce counterparty credit risk in OTC derivatives trading?

Currently, participants in the OTC derivatives market do not collect sufficient collateral (i.e. guarantees; usually they are in the form of cash or securities) to mitigate counterparty credit risk, which refers to the risk of loss arising from one party not making the required payments when they are due.

The Commission's proposal requires that OTC derivatives that are standardised will have to be cleared through central counterparties (CCPs). Since an OTC derivative contract cleared by a CCP usually involves the posting of higher amounts of collateral than an equivalent contract that is not cleared by a CCP, this will increase the amount of collateral held in the system.

As collateral will be held in a few places, there is an argument that risk will be concentrated there. To avoid CCPs becoming a source of risk to the financial system in themselves, the proposal introduces stringent conduct of business, organisational and prudential requirements so that CCPs manage risk properly and are therefore safe to use. Furthermore, the authorisation of a CCP will be subject to that CCP having access to adequate liquidity. Such liquidity could result from access to central bank or to creditworthy and reliable commercial bank liquidity, or a combination of both.

If a contract is not deemed eligible (e.g. prices are not available or the contract is not liquid), or if one of the parties to an eligible contract is not subject to the clearing obligation, then that contract will in all likelihood not be cleared by a CCP. For such contracts, the proposal will require the institutions subject to the clearing obligation to apply robust bilateral risk management technique, including marked-to-market on a daily basis of outstanding contracts and holding of additional capital.

Are commodity derivatives and foreign exchange included in the proposal?

The proposal covers all segments of the OTC derivatives market (interest rate, credit, equity, FX and commodities). While the segments differ in their characteristics, the Commission considers that there is no strong evidence to exclude any of them from the scope of the proposal.

There is, on the contrary, a strong incentive to adopt a comprehensive policy on OTC derivatives, as the failures uncovered by the financial crisis are present in all segments of the OTC derivatives market. Furthermore, there is a risk that excluding any segment from the outset would create a loophole that could be exploited by market participants. This is because any derivative contract can be partitioned and reconstructed into different but economically equivalent contracts. For example, if a specific contract is eligible for clearing but can be reconstructed into two other types of derivatives that are not covered by the Regulation and do not have to be cleared through a CCP, market participants would be able to avoid clearing requirements by modifying the original contract.

What will be the role of European Securities and Markets Authority (ESMA)? What will be the role of national financial supervisors?

The proposal gives ESMA a key role. ESMA will be responsible for the identification of contracts that will be subject to the clearing obligation, i.e. those that are standardised and must then go through CCPs. It will also be responsible for the surveillance of trade repositories and will be a member of the colleges supporting national authorities supervising CCPs operating in several members states. Finally, it will be required to draft a large number of specific binding technical standards for the application of the Regulation, for example with respect to the clearing and information thresholds.

Since the fiscal responsibility of a failure of a CCP would most likely be borne by the Member State in which the CCP is established, it is important that national supervisors retain responsibility for CCP authorisation and supervision. The proposal, however, foresees that in case a CCP offers its services in Member States other than the one where it is established then the national supervisor will be supported by a college of relevant authorities (including, among others, ESMA, the supervisory authorities of the markets served by the CCP and relevant central banks).

What about data protection for trade repositories?

The proposal will require those trade repositories that wish to be used for the purpose of the reporting obligation to register with ESMA. In order to obtain registration, a trade repository will have to comply, among other things, with strict requirements aimed at ensuring the confidentiality, integrity and protection of the information it receives and maintains.

How will the regulation interact with third countries?

Recognition of a third country CCP by ESMA will first require that the European Commission has ascertained the legal and supervisory framework of that third country as equivalent to the EU's, that the CCP is authorised and subject to effective supervision in that third country and that ESMA has established co-operation arrangements with the third country competent authorities. A CCP of a third country will not be allowed to perform activities and services in the EU if these conditions are not met.

Recognition of a third country trade repository will be subject to similar conditions as for CCPs in terms of equivalent legal regime and supervision. In addition, it will be subject to an international agreement being in place between the European Commission and that third country with regard to mutual access to data and exchange of information on OTC derivatives contracts held in trade repositories.

What does the proposal say with respect to interoperability of CCPs?

Interoperability is an essential tool to achieve an effective integration of the post-trading market in Europe. However, interoperability may expose CCPs to additional risks. For this reason, regulatory approval is required before entering into an interoperable arrangement. CCPs should carefully consider and manage the extra risks that interoperability entails and satisfy the competent authorities about the soundness of the systems and procedures adopted. In view of the complexity of derivatives markets and the early stage of development of CCP clearing for OTC derivatives, the proposal does not extend the provisions on interoperability to instruments other than cash securities.

What has been done at the global level on OTC derivatives?

In line with the EU's G20 commitments there have been a number of initiatives both by individual jurisdiction and international bodies. At national level, both the US (Dodd-Frank Act) and Japan have passed OTC derivatives legislation earlier this year. The Commission's

proposal uses different approaches at times, but is very much in line with the legislation being adopted in other parts of the world. This is essential to ensure no regulatory arbitrage.

At international level, the Financial Stability Board set up a work stream, co-chaired by the Commission, in order to address the challenges related to the implementation of the G20 commitments. In addition, the OTC Derivatives Regulators' Forum was established to promote cooperation between regulators. Finally, CPSS/IOSCO has published guidance on the application of its 2004 recommendations for CCPs to OTC derivatives, and is currently in the process of reviewing these recommendations and preparing recommendations for trade repositories.

What additional proposals are foreseen in the OTC derivatives space?

Other measures relevant to OTC derivatives are planned for early 2011, notably the revision of the Capital Requirements Directive (e.g. differentiation of capital charges between CCP cleared and non-CCP cleared contracts), the Market in Financial Instruments Directive (e.g. ensuring trading of standardised contracts on organised trading venues, enhancing trade and price transparency across venues and OTC markets as appropriate) and the Market Abuse Directive (extending the scope of the Directive to OTC derivatives).

What are the next steps?

The proposal now passes to the Council and the European Parliament. The procedure is standard co-decision.

Member States undertook at the June 2010 European Council to conclude all negotiations relating to G20 commitments on financial reform by end of 2011.

In line with G20 commitments, the new rules should be fully in place and operational by the end of 2012.

More information is available at:

http://ec.europa.eu/internal_market/financial-markets/derivatives/index_en.htm

5.

MEMO/10/409

Brussels, 15 September 2010

Proposal for a Regulation on Short Selling and Credit Default Swaps - Frequently asked questions

What is short selling?

Short selling is the sale of a security that the seller does not own, with the intention of buying back an identical security at a later point in time in order to be able to deliver the security. Short selling can be divided into two types:

1. "**Covered**" **short selling** is where the seller has borrowed the securities, or made arrangements to ensure they can be borrowed, before the short sale.

2. "**Naked**" or "**uncovered**" **short selling** is where the seller has not borrowed the securities at the time of the short sale, or ensured they can be borrowed.

Who engages in short selling and why?

Short selling is used by a variety of market participants including hedge funds, traditional fund managers such as pension funds and insurance companies, investment banks, market makers and individual investors. Short selling can be used for the following reasons:

- for speculative purposes (e.g. to profit from the expected decline of a share price);
- to hedge a long position (e.g. to limit losses in comparable shares in which a long position is held);
- for arbitrage (e.g. to profit from the difference in price between two different but inter-related shares); and
- for market making (e.g. to meet customer demand for shares which are not immediately available).

What is the volume of short selling?

It is difficult to obtain reliable data on the extent of short selling of shares in Europe in the absence of marking of transactions, or of disclosure of short selling transactions. Most regulators consulted by the Commission were unable to provide reliable data on the volume of short selling transactions in their jurisdictions. However, the level of securities lending can be used as a proxy and according to this data, short selling in Europe could be estimated to represent between 1 and 3% of market capitalisation. Using the data on disclosures of net short positions available from some Member States (e.g. UK and Spain) it could be estimated to be less than 1% of the total share capital of the issuer. According to data obtained from Greece, which has a system of flagging in place, the volume of short selling is in a range of 0 to 3.33% of the total volume of shares traded.

What is a Credit Default Swap?

A **Credit Default Swap** (CDS) is a derivative which is sometimes regarded as a form of insurance against the risk of credit default of a corporate or government (or sovereign) bond. In return for an annual premium, the buyer of a CDS is protected against the risk of default of the reference entity (stated in the contract) by the seller. If the reference entity defaults, the protection seller compensates the buyer for the cost of default.

In addition to short selling on cash markets, a **net short position** can also be achieved by the use of derivatives, including Credit Default Swaps (CDS). For example, if an investor buys a CDS without being exposed to the credit risk of the underlying bond issuer (a so-called "naked CDS"), he is expecting, and potentially gaining from, rising credit risk. This is equivalent to short selling the underlying bond.

Who trades in CDS and why?

There are four main groups of market participants in the CDS market: dealers, non-dealer banks, hedge funds and asset managers. The dealers are by far the largest players on the market. The aims of these market participants are diverse and they employ different strategies.

CDS can be used for the following purposes:

- **hedging:** CDS can be used to neutralise or reduce a risk to which the CDS buyer is exposed from another position. An example of such an "insurable interest"

would be a bondholder's exposure to the credit risk of the issuer of the bond; by buying a CDS he can reduce that risk by passing it on to the CDS seller;

- **arbitrage:** The typical arbitrage operation that involves CDS is the combination of buying a CDS and entering into an asset swap where the fixed coupon payments of a bond are swapped against a stream of variable payments; or
- **speculation:** CDS can also be used to take a position in order to exploit price changes by trading in and out. For example, a CDS seller has taken on risk (in exchange for the regular payments he receives from the CDS buyer); he will gain from the contract if the credit risk does not materialise during the contract's term or if the compensation received will exceed a potential payout.

What is the volume of CDS transactions?

At the end of May 2010, the gross notional amount of the total CDS market was estimated at USD 14.5 trillion, with about 2.1 million contracts outstanding. The sovereign CDS market, which includes both sovereign indices and sovereign single names, reached USD 2.2 trillion, with about 0.2 million contracts outstanding. The outstanding gross notional amount of the Itraxx Sovereign Index Western Europe was USD 140 billion (and USD 10 billion in net terms).

Why is the Commission proposing legislation on short selling and CDS?

During the financial crisis and more recently in the context of market volatility in euro denominated sovereign bonds, Member States have reacted differently to the issues raised by short selling and credit default swaps (see table 1). A variety of measures have been adopted using different powers by some Member States while others have not taken action. There is currently no legislative framework at European level to deal with these issues in a coherent way. A fragmented approach to these issues can limit the effectiveness of the measures imposed, lead to regulatory arbitrage (which basically means shopping around for the least onerous regime) and create additional costs and difficulties for investors.

While the Commission acknowledges that short selling has economic benefits and contributes to the efficiency of EU markets, notably in terms of increasing market liquidity, more efficient price discovery and helping to mitigate overpricing of securities, it also presents risks.

While reducing the scope for regulatory arbitrage and compliance costs arising from a fragmented regulatory framework, the three main risks of short selling which the Commission is seeking to address in these proposals are:

- **transparency deficiencies:** the current lack of transparency in relation to short selling prevents regulators from being able to detect at an early stage the development of short positions which may cause risks to financial stability or market integrity. Greater transparency to the market on short selling would deter aggressive short selling and give useful information to the market about how short sellers view the performance and prospects of companies.
- **the risk of negative price spirals:** many regulators have expressed concerns about the risks of short selling amplifying price falls in distressed markets, and that this could lead to systemic risks. It was due to these concerns that a number of Member States introduced emergency measures to restrict or ban short selling in some or all shares in autumn 2008. Concerns have also been expressed by some Member States that short positions through CDS transactions could in some circumstances contribute to a decline of sovereign bond prices.

- **the risks of settlement failure associated with naked short selling:** when a short seller sells a financial instrument short without first borrowing the instrument, entering into an agreement to borrow it, or locating the instrument so that it is reserved for borrowing prior to settlement ("naked short selling"), there is a risk of settlement failure. Some regulators consider that this could endanger the stability of the financial system, as in principle a naked short seller can sell an unlimited number of shares in a very short space of time.

Today's proposal addresses both short selling and CDS because CDS can be used to secure a position economically equivalent to a short position in the underlying bonds. The buyer of a naked CDS benefits from the deterioration of the credit risk of the issuer in a very similar manner to the benefit which the seller of the bonds derives from this same deterioration which decreases the prices of the bonds.

What preparatory work has been undertaken prior to this proposal, and what related work is ongoing?

In the context of its ongoing review of the Market Abuse Directive, the Commission asked some high level questions in April 2009 (IP/09/600) about the possibility of a new European short selling regime. The responses gave some support for a new regime.

Also in 2008 the Commission asked the European Securities Markets Expert group (ESME), an advisory group comprised of market participants to prepare a report on short selling. The report containing a series of recommendations was adopted in March 2009.¹

In March 2010, the Committee of European Securities Regulators (CESR) published a report recommending a pan-European model for the disclosure of short positions in EU shares. CESR recommended that short positions should be disclosed to regulators at one threshold and to the market at a higher threshold (see section on transparency below).

More recently, in the Commission Communication of 2 June 2010 on Regulating Financial Services for Sustainable Growth the Commission indicated that it would propose appropriate measures relating to short selling and credit default swaps.² This Communication also highlights other initiatives, such as legislation on market infrastructure (due to be adopted mid-September 2010), the review of the Markets in Financial Instruments Directive (due early 2011) and the review of the Market Abuse Directive (due end 2010/early 2011), which will also affect the regulatory framework applicable to derivatives and credit default swaps. By Easter 2011, the Commission will have proposed a comprehensive framework for these issues.

In March 2010 the Commission services established an internal taskforce to examine concerns expressed by some Member States that sovereign CDS were causing excessive volatility on the underlying sovereign bond markets. The findings of the taskforce underpin the impact assessment accompanying the proposal (the report remains confidential as it is not final and includes confidential data).

The Commission consulted in June of this year seeking views of market participants, regulators and other stakeholders about possible measures relating to short selling and credit default swap issues that could be included in a legislative proposal. The responses to the public consultation can be viewed [here](#).

Prior to the adoption of this proposal by the College, the Commission services carried out an impact assessment which has been published alongside the proposal. The impact assessment took into account the responses to the public consultation, as well as questionnaires to regulators and market participants, and an analysis of published studies. It compared the different policy options in terms of their effectiveness and efficiency in

meeting the objectives of the proposal. An executive summary of the impact assessment is also available.

What are the objectives of the proposal?

The objectives of the proposal are to:

- *increase transparency* on short positions held by investors in certain EU securities;
- *ensure Member States have clear powers to intervene in exceptional situations to reduce systemic risks and risks to financial stability and market confidence* arising from short selling and credit default swaps,
- *ensure co-ordination* between Member States and the European Securities Markets Authority (ESMA) in exceptional situations; and
- *reduce settlement risks and other risks* linked with uncovered or naked short selling.

How does the proposal enhance the transparency of short selling?

Transparency is key in ensuring the efficient functioning and monitoring of financial markets. So, several measures to enhance transparency in short selling are proposed for shares and government debt.

- for shares:

For EU shares the proposals to enhance transparency are largely based on the two tier model recommended by CESR (the Committee of European Securities Regulators) in its report in March 2010. At a lower threshold (0.2% of the issued share capital) notification of a short position would be made only to the regulator and at a higher threshold (0.5%) short positions would be disclosed to the market. Notification to regulators would enable them to monitor and, if necessary, investigate short selling that may pose systemic risks or be abusive. Publication of information to the market would provide useful information to other market users and act as a disincentive to aggressive short selling strategies.

The disclosure regime for shares is complemented by a system of flagging: all share orders on trading venues would be marked as 'short' by persons executing orders if they involve a short sale, so that regulators can obtain additional information about short selling volumes. The trading venue would publish daily a summary of the volume of orders marked as short orders.

- for sovereign bonds:

A specific regime for notification to regulators only of significant net short positions in EU sovereign bonds is proposed. This would also include notification of significant credit default swap positions relating to sovereign debt issuers. Disclosure to regulators of significant net short positions relating to EU sovereign bonds could provide important information to assist regulators to monitor whether such positions are creating disorderly markets or systemic risks or are being used for abusive purposes. The proposals on sovereign bonds provides for information to be disclosed only to regulators rather than to the market as public disclosure could have negative consequences for the operation of sovereign bond markets, notably in terms of liquidity. The evidence from the short selling disclosure regimes for shares at national level is that these have not had an undue impact on the liquidity of share markets.

In order to avoid any circumvention of the short selling disclosure rules through off-exchange derivative transactions, the transparency regimes for EU shares and EU sovereign

bonds also cover the use of derivatives to obtain a net short position relating to the shares or bonds. The proposals also require that short positions should be subtracted (or 'netted off') from long positions, as notification of a net short position provides more meaningful information to regulators and/or the market.

What powers are proposed for regulators in exceptional situations?

In distressed markets when short selling can amplify a downward price spiral, transparency alone may not be enough. The proposal provides that in exceptional situations, competent authorities (i.e. financial regulators) should have powers to impose temporary measures such as to require further transparency or to restrict short selling and credit default swap transactions. These powers extend to a wide range of instruments. The proposal seeks to harmonise the powers and define the conditions and procedures that must be complied with if the powers are to be exercised. Currently, some Member States have powers to act on short selling in exceptional situations and have used these powers, whereas others do not (see table 1). ESMA is given a central role in coordinating action in exceptional situations and ensuring that powers are only exercised where necessary (see section below on the role of ESMA).

The powers of intervention of competent authorities relating to short selling and credit default swaps in exceptional situations only contemplate temporary action (for up to a three month period). A temporary measure can be extended for further periods not exceeding three months at a time, but this must be fully justified.

To ensure a consistent approach to the use of regulators' powers of intervention, the Commission is given the power to further define criteria for determining when an exceptional situation arises. The Commission will act by the adoption of delegated acts, and the Council and Parliament can revoke this delegation of powers or object to a delegated act within two months.

Competent authorities are also given the power in the case of a significant fall in the price of a financial instrument or class of financial instruments to impose a very short restriction on short selling of the financial instrument. Such a 'circuit breaker' power would enable competent authorities to intervene if appropriate to ensure that short selling does not contribute to a disorderly price fall in the instrument concerned.

What role is proposed for ESMA to ensure coordination in exceptional situations?

ESMA is given an important role in coordinating action in exceptional situations. Competent authorities must notify ESMA of the measures they propose to take (or renew) in such a situation, not less than 24 hours before the entry into force of the measures (this period may be shorter in exceptional circumstances). ESMA shall consider the information received and issue an opinion (within 24 hours) on whether the measure or proposed measure is appropriate and proportionate to address the threat, and whether measures by other competent authorities are necessary. Where a competent authority takes action contrary to ESMA's opinion it shall publish a notice giving its reasons for doing so.

However, ESMA may itself take action where two conditions are fulfilled: there is a threat to the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union and there are cross border implications; and measures have not been taken by competent authorities, or are not sufficient, to address the threat. The measures which ESMA can take and the requirements to notify regulators are the same as those foreseen for national competent authorities. A measure adopted by ESMA in accordance with its powers of intervention shall prevail over any previous measures taken by a competent authority.

What is proposed for the regulation of naked short selling?

In order to reduce the risks of settlement failures and increased price volatility which can be associated with naked short selling of shares and sovereign debt, certain requirements are introduced. In order to enter a short sale, an investor must have borrowed the instruments concerned, entered into an agreement to borrow them, or have an arrangement with a third party who has located and reserved them so that they are delivered by the settlement date. This is known as a 'locate rule'. To deter settlement failures, trading venues must also ensure that there are adequate arrangements in place for buy in of shares or sovereign debt where there is a settlement failure, as well as for fines and a prohibition on short selling for late settlement. This approach addresses the risks of settlement failure while taking into account existing best practice in many markets, which is for firms to locate shares for borrowing prior to executing a short sale order.

What enforcement powers for regulators are proposed?

The proposal provides for competent authorities to have all the powers necessary, as well as rules on administrative measures, sanctions and pecuniary measures, to enforce the proposals. ESMA is also given the power to conduct inquiries into specific issues or practices relating to short selling and to publish a report setting out its findings. As certain measures may involve monitoring or enforcement against persons outside the European Union, EU regulators are required to reach cooperation agreements with regulators in third countries where EU shares or sovereign bonds and associated derivatives are traded.

Are any exemptions proposed?

Yes, for market making activities, for primary market operations and for shares whose principal market is outside the EU. Market making includes providing price quotes for financial instruments to provide liquidity to the market or to fulfil client orders. Market making activities are exempt because they play an important role in providing liquidity, and restricting their ability to short sell would have a significant adverse effect on the liquidity of markets. Primary market operations are transactions performed by dealers to provide liquidity to issuers of sovereign debt and for the purposes of stabilisation schemes (i.e. share issues intended to stabilise a share price) under the Market Abuse Directive. Primary market operations are legitimate functions that are important for the proper functioning of primary markets. Shares whose principal market is outside the European Union are exempt, because it would not be proportionate to apply short selling requirements where most trading of the share takes place outside the Union.

Does the proposal envisage a ban on so called "naked CDS"?

A "naked CDS" refers to the situation where the CDS is used by the buyer not to hedge a risk but to take a position (take risk). The seller of the CDS would gain if the credit risk did not materialise; whereas the buyer of the CDS would gain if the price of the CDS subsequently increases due to a perception by the market of an increased risk of default of the issuer.

The proposal does not provide for a permanent ban on naked CDS as the Commission considers that this would be disproportionate as it could negatively affect the liquidity of sovereign debt markets. However, the proposals do provide for:

- Greater transparency so that persons with significant naked CDS positions relating to sovereign debt issuers must notify regulators of their positions. This will enable regulators to monitor whether such positions are creating disorderly markets or systemic risks or being used for abusive purposes.

- Powers for regulators to obtain information in individual cases about CDS transactions.
- Powers of intervention in an exceptional situation for a competent authority to temporarily prohibit or restrict the use of CDS. Such measures would be temporary in nature and subject to coordination by ESMA.

What work has been done at international level on short selling, and notably in the United States?

The International Organisation of Securities Commissions (IOSCO) adopted in June 2009 a 'Final report on regulation of short selling'³ which sets out the following four principles for the regulation of short selling:

1. Short selling should be subject to appropriate controls to reduce or minimise the potential risks that could affect the orderly and efficient functioning and stability of financial markets;
2. Short selling should be subject to a reporting regime that provides timely information to the market or to market authorities;
3. Short selling should be subject to an effective compliance and enforcement system; and
4. Short selling regulation should allow appropriate exceptions for certain types of transactions for efficient market functioning and development.

The Commission believes that its proposals on short selling are fully compatible with the principles outlined by IOSCO.

The United States has had in place a number of measures in relation to short selling which have been revised several times over the years, notably an uptick rule (which was abolished in 2007). In 2004, the SEC adopted Regulation SHO⁴ which introduced the following requirements for short selling: a 'locate' rule for short sellers, a flagging regime and a "close-out" requirement for short positions. On 24 February 2010 the SEC adopted the "revised uptick" or "circuit breaker" rule. This rule restricts short sales of a share whose price has fallen by more than 10% compared to its closing price the previous day.

During the financial crisis, the SEC introduced a number of temporary emergency measures, such as a temporary "pre-borrow" requirement on short selling of shares in 19 systemically important financial institutions on 15 July 2008⁵. On 18 September the SEC imposed a temporary ban on short sales of 799 financial stocks⁶, which grew to 1000 issuers. Since 1 August 2009, the SEC has been working with self-regulatory organisations to make short selling volume and transaction data available to the public through the latter's web sites. The Wall Street Reform Act enacted into law by the US President on 21 July 2010 includes certain provisions on short selling, notably it requires the SEC to adopt rules for public disclosure, at least monthly, of the amount of short sales by institutional investment managers.

Regarding CDS and especially sovereign CDS, no specific measures have been adopted by the US authorities for the time being. However, CDS fall within the scope of the Wall Street Reform Act, and the CFTC and SEC will be expected to produce joint rules to implement this.

Hong Kong also has in place measures relating to short selling: a flagging requirement with daily publication of aggregate data on short selling volume, an uptick rule, a locate rule and buy in procedures and fines in case of non-settlement.

The Commission considers that the adoption of its proposals on short selling and CDS would increase the convergence of the EU's regulatory framework with that of the United States and Hong Kong. A comparison of the EU's proposals with the measures in force in the United States and Hong Kong is included in table 2 below.

What is the proposed timing for adoption of a legislative proposal?

The proposal now passes to the European Parliament and the Council for adoption. Once adopted the regulation would apply from 1 July 2012.

In the context of the proposal to revise the Markets in Financial Instruments Directive (MiFID), due in the first quarter of 2011, the Commission will consider options including transaction reporting, position reporting and the possibility of position limits, which could complement the short selling proposals by providing additional tools to detect and guard against possible systemic risks and risks to market integrity.

In the context of the proposal to revise the Market Abuse Directive, due in the first quarter of 2011, the Commission will consider the option to extend the prohibition of market manipulation to all over the counter instruments, including derivatives, which could impact the prices of financial instruments traded on a regulated market or Multilateral Trading Facility. This option would complement this initiative by providing regulators with the tools to sanction possible market manipulation of underlying bond markets through CDS.

Table 1 – Member States current rules on short selling, CDS etc

	<i>Disclosure of short positions</i>	<i>Ban on naked short selling</i>	<i>Temporary ban on short selling</i>	<i>Restrictions on CDS</i>	<i>Other – flagging, uptick rule</i>
<i>Austria</i>	<i>Yes – 0.25% net short position</i>	<i>Yes, temporary ban for protected financial institutions</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>Belgium</i>	<i>Yes – 0.25% net short position</i>	<i>Yes – for protected financial institutions</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>Bulgaria</i>	<i>Yes, recommendation to reg. mkts</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>Cyprus</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>Czech Republic</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>Denmark</i>	<i>No</i>	<i>No</i>	<i>Yes for protected financial institutions</i>	<i>No</i>	<i>No</i>
<i>Estonia</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>Finland</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>France</i>	<i>Yes – 0.25% net short position for protected financial inst.</i>	<i>Yes for protected financial institutions</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>Germany</i>	<i>Yes – for selected financials, 0.2% net short positions to</i>	<i>Yes for German fin. inst., EU sovereign bonds</i>	<i>No</i>	<i>Yes, ban on naked CDS</i>	<i>No</i>

	<i>reg. and 0.5% to public</i>				
<i>Greece</i>	<i>No</i>	<i>Yes temporary ban for all shares on EL stock exchange</i>	<i>Yes for all shares but rescinded 01 September 2010</i>	<i>No</i>	<i>Yes – flagging and uptick rule</i>
<i>Hungary</i>	<i>Yes – 0.01% gross short position</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>Ireland</i>	<i>Yes – 0.25% net short position</i>	<i>No</i>	<i>Yes for protected financial institutions</i>	<i>No</i>	<i>No</i>
<i>Italy</i>	<i>No</i>	<i>No</i>	<i>Yes but expired 31.07.09</i>	<i>No</i>	<i>No</i>
<i>Latvia</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>Lithuania</i>	<i>No</i>	<i>Yes – shares should be owned or borrowed before sale</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>Luxembourg</i>	<i>No</i>	<i>Yes in financial institutions</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>Malta</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>The Netherlands</i>	<i>Yes – 0.25 net short position</i>	<i>No</i>	<i>Yes but expired 01.06.09</i>	<i>No</i>	<i>No</i>
<i>Poland</i>	<i>No</i>	<i>No – although updated requirements enhance settlement</i>	<i>Yes but only on illiquid securities</i>	<i>No</i>	<i>Yes - flagging</i>
<i>Portugal</i>	<i>Yes – 0.2% net short position to regulator, 0.5% to public</i>	<i>Yes</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>Romania</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>Slovakia</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>Slovenia</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>Spain</i>	<i>Yes – 0.2% net short position to regulator, 0.5% to public</i>	<i>Yes</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>Sweden</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>UK</i>	<i>Yes – 0.25% net short position</i>	<i>No</i>	<i>Yes for protected fin. inst. but lifted</i>	<i>No</i>	<i>No</i>

Sources: Measures adopted by CESR Members on short selling, CESR 08/742, 22.09.08, updated: 01.09.10 and Clifford Chance, Short selling rules: the global picture, Client Briefing June 2009.

Note: The above table provides only a high level overview of the most recent available measures and specific details should be taken from each Member State's own regulation.

Comparison of Short Selling Regulation EU – US – Hong Kong – September 2010

	US	EU	Hong Kong
<i>Name</i>	<ul style="list-style-type: none"> Regulation SHO 	<ul style="list-style-type: none"> Proposal for a Regulation of the European Parliament and the Council on Short Selling and Credit Default Swaps 	-
<i>Transparency</i>	-	<ul style="list-style-type: none"> Private disclosure to the Regulator of any net economic shot position (over a certain threshold) in an – <ul style="list-style-type: none"> <ul style="list-style-type: none"> Equity (inc derivatives); or Sovereign Debt (inc uncovered CDS). Public disclosure to the Market of net economic shot position (over a certain, higher, threshold) in an – <ul style="list-style-type: none"> <ul style="list-style-type: none"> Equity (inc derivatives). 	-
<i>Private Disclosure to Regulators of Short Positions</i>	-		-
<i>Public Disclosure of Short Positions</i>			
<i>Order Marking</i>	<ul style="list-style-type: none"> Applies to exchange listed equity instruments, traded on exchange. 	<ul style="list-style-type: none"> Applies to exchange listed equity instruments, traded on 	<ul style="list-style-type: none"> Applies to exchange listed equity instruments, traded

		exchange.	on exchange.
<i>Public Disclosure of Market Orders</i>	<ul style="list-style-type: none"> • SEC appointed Self Regulatory Organisations ("SROs") does – <ul style="list-style-type: none"> • • Publish daily aggregate short-selling volume in each individual equity security for that day; and • On a one-month delayed basis, publish anonymised information regarding individual short sale transactions in all exchange-listed equity securities. • [SROs are typically exchanges and related parties e.g. NYSE, FINRA, NASDAQ.] 	<ul style="list-style-type: none"> • The trading venue shall – <ul style="list-style-type: none"> • • Publish, at least daily, aggregate short-selling volume in each individual equity security. 	<ul style="list-style-type: none"> • Hong Kong Stock Exchange (HKSE) currently does – <ul style="list-style-type: none"> • • Publish daily aggregate short-selling volume in each individual equity security for that day.
<i>Circuit Breaker/Up Tick Rule</i>	<ul style="list-style-type: none"> • Applies only to Covered Securities (select equities). • Triggered if the price falls 10% below the previous day's close. • Implements an up tick rule for the remainder of the day and the following trading day. 	<ul style="list-style-type: none"> • Applies to all financial instruments. • Triggered, at the discretion of the Competent Authority, in case of a significant price fall from the previous day's close (for shares 10%). • Implements a temporary short 	<ul style="list-style-type: none"> • Applies to exchange listed equity instruments. • No Circuit Breaker. • Permanent up tick rule in place on HKSE.

		selling prohibition for the remainder of the day and the following trading day.	
Locate Rule <i>(restrictions on uncovered short sales)</i>	<ul style="list-style-type: none"> • Applies only to equities, and requires: <ul style="list-style-type: none"> • • "Reasonable grounds"; <p>[Reasonable Grounds is not defined, however the SEC has provided guidance stating that it may include a security's appearance on an "easy to borrow list" where the list is based on recent data (<24 hours).]</p>	<ul style="list-style-type: none"> • Applies to all equities and EU sovereign debt instruments and requires: <ul style="list-style-type: none"> • • an agreement to borrow, or • other confirmed arrangements with a third party. 	<ul style="list-style-type: none"> • Applies only to equities and traded on exchange, and requires: <ul style="list-style-type: none"> • • an exercisable and unconditional right.
Close Out/Buy In Requirements	<ul style="list-style-type: none"> • Applies only to the specially defined equity threshold securities. • Requires brokers and dealers that are participants of a registered clearing agency to "close-out" failure-to-deliver positions in threshold securities. • The broker or dealer must buy in securities of a like kind or quality and close out the position if – <ul style="list-style-type: none"> • • failure to deliver occurs on the designated settlement date. E.g. 	<ul style="list-style-type: none"> • Applies to all equities and EU sovereign debt instruments. • Requires trading venues with equities or EU sovereign debt admitted to trading to ensure it, or the relevant CCP, to have in place appropriate buy in procedures. • The trading venue or CCP must buy in the instruments if the person who has the short position is unable to settle within – 	<ul style="list-style-type: none"> • Applies to all equities cleared by HKSCC's clearing system. • The broker or dealer may be required to buy in the securities and close out the position – <ul style="list-style-type: none"> • • At any point past the day after the settlement date (e.g. at T+3).

	<p>on T+3 settlement, close out initiated on T+4.</p> <ul style="list-style-type: none"> • Until the position is closed out, the broker or dealer and any broker or dealer for which it clears transactions may not effect further short sales in that threshold security without borrowing or entering into a bona fide agreement to borrow the security. 	<ul style="list-style-type: none"> • four trading days after the day on which the trade takes place, or • six trading days after the day on which the trade takes place in the case of market making activities. • If the trading venue or CCP is unable to buy in the instruments then it must settle the position in cash, including an amount for any damages incurred by the buyer. • The person who was unable to settle must pay the trading venue or CCP a reasonable amount for the cost of executing the buy in or cash compensation. 	<ul style="list-style-type: none"> • HKSCC may also impose fines on the stockbroker from T+2 onward.
<i>Emergency Powers</i>	<ul style="list-style-type: none"> • Applies to exchange listed securities. • Gives SEC plenary authority to regulate short sale transactions. 	<ul style="list-style-type: none"> • Applies to all financial instruments. • Contains a pre-defined action framework. • Enables Member States or ESMA to prohibit or impose conditions 	<ul style="list-style-type: none"> • There are no specific emergency powers.

		relating to short selling.	
<i>Other</i>	<ul style="list-style-type: none"> • The 2010 Dodd-Frank act provides provisions on short selling. • Section 929X specifies the rule writing authority of the SEC on - <ul style="list-style-type: none"> • • Disclosure, manipulative short selling, and notification by brokers to their customers allowing them to prevent their securities to be used for short selling or to receive compensation if they do. • Section 417X requires the SEC, by 2010, to undertake a review and evaluation of the following- <ul style="list-style-type: none"> • • Delivery time, failure to deliver, disclosure of short positions to market or regulator and expanded order marking requirements 	-	-

1 :

The full text of the ESME report can be found at

http://ec.europa.eu/internal_market/securities/docs/esme/report_20090319_en.pdf

2 :

Page 7 of the Communication of 2 June 2010 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the European Central Bank.

3 :

For the text of the final report see:

<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD292.pdf>

4 :

Regulation SHO, Securities and Exchange Commission, 17 CFR PARTS 240, 241 and 242 [Release No. 34-50103; File No. S7-23-03]

http://www.sec.gov/rules/final/34-50103.htm#P19_2741

5 :

SEC Release 34-58166, Emergency Order Pursuant to Section 12(k)(2) of The Securities Act of 1934 Taking Temporary Action to Respond to Market Developments, July 15, 2008. Available at: <http://www.sec.gov/rules/other/2008/34-58166.pdf>.

6 :

SEC, Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 Taking Temporary Action to Respond to Market Developments. Release 34-58572. September 17, 2008. Available at: <http://www.sec.gov/rules/other/2008/34-58572.pdf>.

6.

Memo/10/376

Brussels, 16 August 2010

Revision of the Financial Conglomerates Directive - Frequently Asked Questions

1) What are financial conglomerates?

Financial conglomerates are financial groups that are active in one or more country and operate in both the insurance and banking business. They are often large and complex. Due to their size, financial conglomerates are often of systemic importance to our economy: either for one or more Member States or even for the EU as a whole.

The fact that financial conglomerates can impact our economy was highlighted during the financial crisis in 2008. A number of financial conglomerates had difficulties and governments across Europe had to resort to large financial injections in order to keep these financial conglomerates afloat.

2) How are financial conglomerates currently supervised?

Currently, supervision in Europe is mainly done at the national level. Each single legal entity that wants to operate in the banking sector in an EU Member State needs authorisation from the national financial supervisor and needs to comply with the relevant banking regulation. The same applies for legal entities that want to operate in the insurance sector: such entities need to be authorized as insurance companies and must comply with the relevant insurance regulation. Supervision rules also allow for a group of authorised banking entities to be subject to consolidated banking supervision. Similarly, in the insurance sector, a group of authorised insurance entities can be subject to insurance group supervision.

Financial conglomerates are often active in both banking and insurance business and operate in several EU Member States. The Financial Conglomerate Directive (2002/87/EC) gives national financial supervisors additional powers and tools to watch over these firms. More specifically, the Directive requires supervisors to apply supplementary supervision on these conglomerates, in addition to the specific banking and insurance supervision.

3) What is supplementary supervision?

Supplementary supervision becomes relevant when a financial group (or a "conglomerate") consists of several legal entities that are authorised to do business in banking, insurance or other sectors of the financial services industry. The number of legal entities within a conglomerate can exceed 500 or even 1.000. All of these entities are controlled by a parent entity, where decisions are made regarding business strategies, internal governance and group-wide risk management. While a parent entity can be a regulated entity itself, such as a bank or an insurance company, it can also take the form of a holding company.

Supplementary supervision focuses on problems that can arise from:

- Multiple use of capital: supervisors are to make sure that capital is not used twice or more within a conglomerate. For example, funds may not be included in the calculation of capital on both the level of the single entity and the parent entity.
- Group risks: Group risks are risks that arise from the group structure and which are not related to specific banking or specific insurance business. They refer to risks of contagion (when risks spread from one end of the group to another), management complexity (managing more than 1.000 legal entities is a far more difficult challenge than managing 20 legal entities), risk concentration (the same risk materialising in several parts of the group at the same time), and conflicts of interest (e.g. one part of the group has an interest in selling an exposure, while another part of the group has an interest in keeping that exposure).

The 2002 Financial Conglomerates Directive allows national supervisors to monitor those risks, for example by requiring conglomerates to provide additional reporting. Supervisors can also require conglomerates to present additional risk management or internal governance measures. The Directive also requires supervisors to cooperate across sectors and across borders in order to control possible group risks.

4) Why is the Commission now proposing a revision of the Financial Conglomerates Directive?

In the light of the financial crisis, the Commission evaluated the effectiveness of the Financial Conglomerates Directive in 2008. It found that supplementary supervision, as stipulated in the Directive, could not be carried out on certain financial groups because of their legal structure. In some cases, national financial supervisors were left without the appropriate tools because they had been obliged to choose either banking or insurance supervision under the sector-specific directives or supplementary supervision under the Financial Conglomerates Directive as the definitions for banking and insurance holding companies in the sector-specific directives and for mixed holdings in the Conglomerates Directive were mutually exclusive. The main objective of the revision of the Directive is to correct this unintended consequence of the current rules.

5) What is to change under the Commission's proposal?

The proposed amendments to the 2002 Directive can be summarised as follows:

- Under the current rules, supervisors have to choose which supervision they apply when a group acquires a significant stake in another sector and when the parent entity is a holding company. It is now proposed to change this: both sector-specific (banking and insurance) supervision and supplementary supervision could be applied on the conglomerate's parent entity, also if it concerns a holding company. Banking supervision would therefore remain applicable even if the banking group acquires a significant stake in an insurance business. By the same token, insurance supervision would also remain applicable if the insurance group acquires a significant stake in a banking business.
- When justified by potential group risks as a whole, financial supervisors should be allowed to identify a group as a financial conglomerate and apply supplementary supervision. The identification process of financial conglomerates should allow for risk-based assessments, in addition to existing definitions relating to size ("quantitative indicators"). Under the current rules, the balance sheet figures are determinative when identifying conglomerates. This approach sometimes results in a list of conglomerates that are not necessarily exposed to group risks, while groups that are evidently exposed to group risks are not always included within the scope of supplementary supervision.
- Financial supervisors should be allowed to waive a group from supplementary supervision if it is small (smaller than 60 billion total assets) and if the supervisor assesses the group risks to be negligible, even if the small group meets the quantitative indicators. This should enable supervisors to allocate their resources to the supplementary supervision of larger and systemically important conglomerates.

The proposed revision of the 2002 Financial Conglomerates Directive also amends the relevant banking and insurance supervision legislation, namely the Capital Requirements Directive (2006/48/EC and 2006/49/EC) and the Directive on Supplementary Supervision of Insurance Undertakings in Insurance Groups (98/78/EC). The Commission is also currently reflecting on tying in this initiative with Solvency II, the next generation of supervisory rules for insurance and reinsurance companies in the EU.

6) When will these new rules come into force?

With the proposal now passing to the European Parliament and the EU Member States for consideration, the Commission hopes to see the changes enter into force in 2011.

7) How does this proposal tie in with the wider work on crisis prevention and management the EU is doing? Will the European Financial Supervision Authorities be involved?

The main objective of this initiative is to restore the full spectrum of supervisory tools and powers, regardless of the legal structures of financial conglomerates. This unintended consequence of the current rules needs to be addressed as soon as possible. Nevertheless, the initiative will also strengthen the effective supervision of financial conglomerates. The Commission believes that supplementary supervision of large, complex groups, operating in several countries, can only be effective if the same supervisory approach is applied consistently across all EU Member States

As regards financial conglomerates operating in several EU countries, closer coordination between national financial supervisors will be required, particularly through the new European Financial Supervision Authorities (see [IP/09/1347](#)). The proposals regarding those Authorities are currently being negotiated between the Council and the European Parliament. The new European Banking Authority (EBA) and the new European Insurance and Occupational Pensions Authority (EIOPA) are to form a Joint Committee to oversee cooperation and coordination between national supervisors in the case of financial conglomerates.

As a follow up to this proposal and in order to assist the Commission in proposing further improvements of the framework of supplementary supervision, the Joint Committee is also expected to look into extending the scope of supplementary supervision to non-regulated entities such as Special Purpose Entities. These are legal entities where assets are stored off the groups' balance sheets. During the crisis, it became clear that contagion and risk concentration originated also from non-regulated parts of financial conglomerates. This issue has been highlighted also on international level in the context of the G20 work. It is the Commission's intention to continue to work on this issue and present further amendments to the Directive on Financial Conglomerates as regards this matter as well as other issues linked in particular to the new European supervisory structure.

More information:

http://ec.europa.eu/internal_market/financial-conglomerates/supervision_en.htm

7.

IP/10/1064

Brussels, 23 August 2010

Commission urges insurance companies to participate in the Solvency II Quantitative Impact Study (QIS5)

The Solvency II Directive, adopted by the European Parliament and the Council in 2009 and to be implemented by 1 January 2013, has set the framework for the next generation of supervisory rules for insurance and reinsurance companies in the EU. As the rules of the Solvency II Directive are to be complemented by so-called “level 2” implementing measures, which will be adopted by the Commission, sound and extensive empirical data for quantitative solvency requirements are needed. For this reason, the Commission has launched a fifth Quantitative Impact Study (QIS5) that will be run by the Committee of

European Insurance and Occupational Pensions Supervisors (CEIOPS) from August to November 2010. The European Commission strongly encourages insurance and reinsurance companies across the EU to participate in this exercise.

Internal Market and Services Commissioner Michel Barnier said: "This additional quantitative impact study for Solvency II will allow us to get the details of the Solvency II implementing measures and the exact calibration of those measures right. The results of the study will help the Commission to take a final decision on the amount of capital that insurance and reinsurance companies will be required to hold under the new solvency regime. We need reliable, extensive and representative data from the market in order to make the right decisions. I therefore strongly encourage the insurance industry to participate in this exercise."

QIS5 is the latest in a series of studies initiated by the Commission in order to ensure the most accurate formulation of the Solvency II framework. QIS1 to QIS4 took place between 2005 and 2008. The results of these studies provided the empirical basis for the preparation by the Commission of the Solvency II Directive (2009/138/EC), as well as for the subsequent negotiations between the European Parliament and the Council.

The results from the fifth QIS will provide valuable input to help refine the calibration of the Solvency Capital Requirement standard formula, as well as the requirements for technical provisions and own funds in the level 2 implementing measures. This means that the final requirements that will be introduced may be different from the approach tested in this exercise. The results from QIS5 will be discussed in detail with the Member States, as well as with other stakeholders.

It is essential for the successful introduction of the Solvency II framework that QIS5 provides solid data that is representative of companies across insurance business lines and Member States. This can only be ensured through a high level of participation in QIS5. The Commission aims for a participation rate of at least 60% of EU insurance and reinsurance companies and 75% of EU insurance groups. It is particularly important that smaller insurance companies, as well as insurance providers specialised in specific business lines participate in the exercise.

CEIOPS has made available the QIS5 spreadsheets on its web site, and will shortly make available some additional guidance for companies who have never participated in a QIS exercise before.

On Solvency II

The aim of the so-called "Solvency II" framework is to ensure that insurance and reinsurance undertakings are financially sound and can withstand adverse events in order to protect policy holders and the stability of the financial system as a whole. In addition to quantitative requirements, such as capital requirements (Pillar 1), insurance and reinsurance companies will be required to meet qualitative requirements relating to governance and risk-management (Pillar 2), as well as to regularly disclose information to supervisors and to the public (Pillar 3).

The Solvency II framework will consist of the rules contained in the level 1 Solvency II Directive (2009/138/EC) – as implemented by the Member States – as well as level 2 Implementing Measures and supervisory measures, i.e. so-called level 3 Binding Technical Standards and non-binding guidelines. The new rules will be applicable from 1 January 2013 onwards.

More information:

http://ec.europa.eu/internal_market/insurance/solvency/index_en.htm

<http://www.ceiops.org/content/view/118/124/>

A sajtóbejelentések elérhetőek:

<http://europa.eu.int/rapid/searchResultAction.do?search=OK&query=markt&username=PROF&advanced=0&guiLanguage=en>