

Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC

CHAPTER I

ESTABLISHMENT AND LEGAL STATUS

Article 1

Establishment and scope of action

1 This Regulation establishes a European Supervisory Authority (European Insurance and Occupational Pensions Authority) (hereinafter the Authority').

2 The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 2009/138/EC with the exception of Title IV thereof, of Directives 2002/92/EC, 2003/41/EC, 2002/87/EC, 64/225/EEC, 73/239/EEC, 73/240/EEC, 76/580/EEC, 78/473/EEC, 84/641/EEC, 87/344/EEC, 88/357/EEC, 92/49/EEC, 98/78/EC, 2001/17/EC, 2002/83/EC, 2005/68/EC and, to the extent that those acts apply to insurance undertakings, reinsurance undertakings, institutions for occupational retirement provision and insurance intermediaries, within the relevant parts of Directives 2005/60/EC and 2002/65/EC, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority.

3 The Authority shall also act in the field of activities of insurance undertakings, reinsurance undertakings, financial conglomerates, institutions for occupational retirement provision and insurance intermediaries, in relation to issues not directly covered in the acts referred to in paragraph 2, including matters of corporate governance, auditing and financial reporting, provided that such actions by the Authority are necessary to ensure the effective and consistent application of those acts.

4 With regard to institutions for occupational retirement provision, the Authority shall act without prejudice to national social and labour law.

5 The provisions of this Regulation are without prejudice to the powers of the Commission, in particular under Article 258 TFEU, to ensure compliance with Union law.

6 The objective of the Authority shall be to protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its citizens and businesses. The Authority shall contribute to:

- a improving the functioning of the internal market, including in particular a sound, effective and consistent level of regulation and supervision,
- b ensuring the integrity, transparency, efficiency and orderly functioning of financial markets,
- c strengthening international supervisory coordination,
- d preventing regulatory arbitrage and promoting equal conditions of competition,
- e ensuring the taking of risks related to insurance, reinsurance and occupational pensions activities is appropriately regulated and supervised, and

f enhancing customer protection.

For those purposes, the Authority shall contribute to ensuring the consistent, efficient and effective application of the acts referred to in paragraph 2, foster supervisory convergence, provide opinions to the European Parliament, the Council, and the Commission and undertake economic analyses of the markets to promote the achievement of the Authority's objective.

In the exercise of the tasks conferred upon it by this Regulation, the Authority shall pay particular attention to any potential systemic risk posed by financial institutions, the failure of which may impair the operation of the financial system or the real economy.

When carrying out its tasks, the Authority shall act independently and objectively and in the interest of the Union alone.

Article 2

European System of Financial Supervision

1 The Authority shall form part of a European System of Financial Supervision (ESFS). The main objective of the ESFS shall be to ensure that the rules applicable to the financial sector are adequately implemented to preserve financial stability and to ensure confidence in the financial system as a whole and sufficient protection for the customers of financial services.

2 The ESFS shall comprise the following:

- a the European Systemic Risk Board (ESRB), for the purposes of the tasks as specified in Regulation (EU) No 1092/2010 and this Regulation;
- b the Authority;
- c the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁽¹⁾;
- d the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁽²⁾;
- e the Joint Committee of the European Supervisory Authorities (Joint Committee) for the purposes of carrying out the tasks as specified in Articles 54 to 57 of this Regulation, of Regulation (EU) No 1093/2010 and of Regulation (EU) No 1095/2010;
- f the competent or supervisory authorities in the Member States as specified in the Union acts referred to in Article 1(2) of this Regulation, of Regulation (EU) No 1093/2010 and of Regulation (EU) No 1095/2010;

3 The Authority shall cooperate regularly and closely with the ESRB as well as with the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Securities and Markets Authority) through the Joint Committee, ensuring cross-sectoral consistency of work and reaching joint positions in the area of supervision of financial conglomerates and on other cross-sectoral issues.

4 In accordance with the principle of sincere cooperation under Article 4(3) of the Treaty on European Union, the parties to the ESFS shall cooperate with trust and full mutual respect, in particular in ensuring the flow of appropriate and reliable information between them.

5 Those supervisory authorities that are party to the ESFS shall be obliged to supervise financial institutions operating in the Union in accordance with the acts referred to in Article 1(2).

Article 3

Accountability of the Authorities

The Authorities referred to in Article 2(2)(a) to (d) shall be accountable to the European Parliament and the Council.

Article 4

Definitions

For the purposes of this Regulation the following definitions apply:

- (1) ‘financial institutions’ means undertakings, entities and natural and legal persons subject to any of the legislative acts referred to in Article 1(2). With regard to Directive 2005/60/EC, ‘financial institutions’ means only insurance undertakings and insurance intermediaries as defined in that Directive;
- (2) ‘competent authorities’ means:
 - (i) supervisory authorities as defined in Directive 2009/138/EC, and competent authorities as defined in Directive 2003/41/EC and 2002/92/EC;
 - (ii) with regard to Directives 2002/65/EC and 2005/60/EC, the authorities competent for ensuring compliance with the requirements of those Directives by financial institutions as defined in point (1).

Article 5

Legal status

- 1 The Authority shall be a Union body with legal personality.
- 2 In each Member State, the Authority shall enjoy the most extensive legal capacity accorded to legal persons under national law. It may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings.
- 3 The Authority shall be represented by its Chairperson.

Article 6

Composition

The Authority shall comprise:

- (1) a Board of Supervisors, which shall exercise the tasks set out in Article 43;
- (2) a Management Board, which shall exercise the tasks set out in Article 47;
- (3) a Chairperson, who shall exercise the tasks set out in Article 48;
- (4) an Executive Director, who shall exercise the tasks set out in Article 53;

- (5) a Board of Appeal, which shall exercise the tasks set out in Article 60.

Article 7

Seat

The Authority shall have its seat in Frankfurt am Main.

- (1) See page 12 of this Official Journal.
- (2) See page 84 of this Official Journal.