



I-2.4: Neutralization by impact surveys before Act and Regulation's adoption

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Translated
Article

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In France, the article 39 of the French Constitution which results from the Constitutional Act of the 23rd of July 2008 requires that the Government back each bill with an impact survey which explains why the new legislation is needed and what can be expected.

Neutralization by the impact surveys will allow the future adopted texts to be impartial thanks to the prior consultation required by the legislator or regulator.

An impact survey for all the new legislation or European directive transposition will apply to overview and description of the new law, of its legal framework, of the cost of the measure, and of the potential and predictable financial impacts for each sector, and to the description of those impacts per company.

The transposition of European directives into national law should be taking care not to increase what is resulting from European regulations in terms of costs for the companies.

Firstly, we process an analysis of the national example of regulation and supervision Reform in the insurance sector and secondly, we analyze the European example of prudential's standards Reform in the insurance sector (Solvency II).

I.The national example: regulation and supervision of the insurance sector

1.History of a reform

The idea to merge the regulatory authorities of the financial sector is not new.

A first step was taken by the Financial Security Act of the 1st of August 2003. In addition to the overhaul of the financial market authorities (COB-CMF) in a single authority (AMF), this Act operated the merger of the regulatory authorities for the insurance companies, "*mutuelles*" and "*institutions de prévoyance*" in a single commission (CCAMIP becomes ACAM) which is an independent public authority with its own legal personality.

The international financial crisis of 2008 has been the occasion of reopening the debate on the organization and the mechanism of regulation for financial services in France.

The Act of the 4th of August 2008 on economy modernization allowed the Government to legislate by ordinance on the measures that will be needed for:

- The connection of the regulatory authorities of the banking and insurance sector;
- The adjustment of the jurisdiction of the regulatory authorities and the other entity involved in the control of the marketing and commercialization process of the financial products;
- The adaptation of the procedures implemented by those authorities and of the sanctions imposed.

The report of Mr. Bruno Deletré submitted to the Minister of Economy and Finance on the 19th of January

2009 is based on two main proposals:

- The connection of the monitoring authorities of the banking and insurance sectors within a single authority controlled by the Bank of France (Banque de France), whose mission is to ensure the strength and the solvency of the financial institutions in those sectors;
- The merger of the missions of control of the marketing, of the contracts, and of the intermediaries for all financial sectors in favor of the AMF beyond its current skills in financial market and savings supervision.

During the High Committee of the Marketplace of the 30th of June 2009 and on the basis of the first proposal, the Minister of Economy and Finance has opened a public consultation which ended the 27th of July 2010.

This consultation allowed a new agreement between all the parties involved on a new structure of regulation based on the following principles:

- The reinforcement of the regulation for the banking and insurance sectors, and the means allocated to it;
- The independence of the new authority;
- The recognition of the specificities of each of the two sectors;
- A better coordination between the new authority and the Market Authorities in the field of business and marketing practices.

2. Creation of a new Regulation Authority (Autorité de contrôle prudentiel (ACP))

The Prudential Control Authority (ACP) is described as an independent administrative authority (article L.612-1 I of the Code monétaire et financier (CMF)) unlike the former Insurance Companies Monitoring Authority (ACAM) which was an independent public authority. The independence of the new authority is guaranteed by its financial autonomy recognized by the article L.612-18 of the CMF.

However, unlike the ACAM, the new Authority has no legal personality. It will be to the State of France to assume the possible harmful consequences of the activities of the new authority.

Nevertheless, the lack of legal personality of the ACP does not deprive itself of the ability to bring an action. Indeed, the article L.612-16 I of the CMF gives to the President of the ACP, the power to sue anyone in any Court. Furthermore, the ACP can bring a public action in criminal proceedings for the application of the criminal measures of the various Codes applying in the insurance sector (article L.612-16 II CMF).

3. The innovations introduced by the banking and financial regulation Act of the 22nd of October 2010 and the new powers of the ACP

The Ordinance of the 21st of January 2010 was ratified by the French Parliament as part of the banking and financial regulation Act of the 22nd of October 2010. Beyond this ratification, the Parliament passed on the creation of a Board on Financial Regulation and Systemic Risks (article L.631-2 of the CMF).

This Act makes several deep modifications of the measures as regards to the ACP in particular in order to enhance the consumer protection functions of this body. Then, the article L.621-29-1 of CMF states that the ACP can:

- Check the compatibility with any legal clauses of the voluntary codes of conduct developed by the professional associations;
- Approve all or part of those voluntary codes of conduct at the request of a professional association;
- Declare the existence of best professional practices;
- Draw up recommendations defining the rules of those best professional practices;
- Ask to the professional associations to make recommendations on those matters;
- Publish a compendium of the approved codes, professional rules and other best practices

identified or recommended it ensures.

However, there has been no impact survey about the new powers of the ACP. Those powers have not been discussed by the High Committee of the Marketplace in July 2009 or in the ordinance project submitted to the Advisory Committee for Legislation and Financial Regulation (CCLRF). Indeed, the new powers of the ACP have not been exposed in the amendment notice of the Government in the banking and financial regulation Act project. There have been neither committee works nor debate in the Parliament. Only the Insurance sector has been consulted on short notice in August 2010.

4. Transparency policy of the ACP

In its transparency policy, the ACP wants to specify the various instruments at its disposal in order to provide any person controlled and the public with specific and structured information on the orientation and analysis used by it when carrying out its duties. The ACP specifies for each instrument the nature, content and scope, subject to the sovereign appreciation of the Courts. Then the ACP warns the financial sector of any conduct it considers inappropriate.

Nevertheless, the sector observes the lack of indication on the legal treatment of those referred legal instruments and the imperative feature of the contents of the best practices identified and recommended by the ACP. It also needs that the best practices be noticed before any control.

It emerges of this first analysis that the ACP's creation, included its architecture, has been the subject of a large public consultation before the adoption of the Ordinance of the 21st of January 2010. There has been an important consultation with the intention of ensure the preservation of a strong insurance competence and the comprehension of the economic model of insurance. Nevertheless, the exam of the new powers of the ACP has been no impact survey whereas these raise many questions in juridical view.

II. The European example: Solvency II

Before introducing the European example of prudential's standards Reform, it should be reminded the scheme of the new European Regulations which take place this year.

The European Regulations on the reform of the European regulation structure for financial services have been published in the Official Journal of the European Union the 15th of December 2010. Those regulations establish a European Committee of Systemic Risks that monitors macro prudential financial system, and three new European regulation authorities at a micro financial level, namely:

- European Banking Authority (EBA);
- European Insurance and Occupational Pensions Authority (EIOPA);
- European Securities and Markets Authority (ESMA).

Those four new bodies are part of the European Financial Supervision system, which includes regulatory authorities of the member States. The supervision of the financial institutions has not been transferred at a European level. National authorities are still responsible for the national control of the financial institutions within their jurisdictions.

1. The definition of Solvency in the insurance field

Solvency is the ability for an insurer to respect the long-term commitments he takes with customers. It depends of the importance of those commitments (cover and protections offered to the policyholder) and of the resources available within the insurance company, especially funds and assets such as stocks or bonds. The life-insurance policies are an important part of those commitments, along with other covers and protections offered to the policyholder. The insolvency is the main financial risk faced by insurance companies.

2. The reasons of the Reform

Solvency II is a reform of the European rules governing the solvency of insurance companies. The reform aims to adjust the level of equities to the real risks the insurance companies face and especially financial risks. It is based on the framework Directive adopted in 2009 and on the implementation measures to be defined. It aims to give to the insurers the means to better ensure their solvency, while building a single

European Insurance Market.

3.The importance of the implementations measures of Solvency II

The implementation measures which are currently being defined will determine the concrete effect of the Reform. It should be focused on the proposed measures created by the European Commission.

4.The timetable of Solvency II

This Reform should be operational in 2013, but the implementation measures are already discussed. It only remains a few months before the settings become definitive, which is short compared to the decision process.

5.The links between Solvency II and the financing of the Economy

A modification of the solvency rules mean to change the investment strategies of insurance companies, which invest 1,600 billion Euros into the Economy (half of it is devoted to companies). This balance may be affected by the reform of the solvency standards.

6.The final impact study (QIS5)

The last impact study before the final choice of the implementation standards has been completed and the results were announced by the EIOPA on the 14th of March 2011. The French insurance companies have resisted the crisis and have recovered a high financial strength at the end of 2009. However, there are still uncertainties on the calculating methods of future prudential ratios and on the extreme sensitivity ratios to market conditions.

The French and Europeans Insurance Federations, reminds the need to define in coherent way the scope of the capital and to reduce some calibration especially for long risks. The equal treatment between the different parties of the Insurance sector and the Financial Services must be guaranteed, and the implementation standards simplified. Finally, it is necessary to provide appropriate transitional measures. The French and European insurers are mobilized in order to find the solutions to the issues revealed by the current standard draft.

It appears that the prudential's standards Reform in the insurance sector has been the subject of a large consultation. This important consultation allows the insurance companies to take appropriated measures for new requirements.