Minutes of the Meeting of the Expert Group on Banking, Payments and Insurance (Insurance formation)

Brussels, 14 July 2015

The meeting was chaired by Mrs Nathalie Berger, Head of the Insurance and Pensions Unit at the European Commission's Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA).

1. Agenda

The Chair proposed to modify the draft agenda by adding a point to discuss a series of proposals made by one Member State for modification of the Solvency II implementing measures. The modified agenda was adopted.

2. Proposals modifying the Solvency II implementing measures

One Member State presented a series of proposals amending the Solvency II implementing measures outlining the necessity to find the right balance between the prudential soundness of insurers and their ability to invest. The proposals mainly concerned the calibration of capital charges applied to different categories of investments.

Two Member States welcomed some of the ideas. Twelve Member States expressed reservations about any modification of the implementing measures before the application of the new regime. These Member States highlighted that such amendments could be considered in the context of the review of Solvency II in a few years, on the basis of robust analysis, and should be consistent with the objective of the protection of policyholders.

The Chair concluded by saying that the comments received by the participants would be taken into account in the completion of implementing measures.

3. Commission updates

The Chair updated the members on the status of the Insurance Distribution Directive. A political agreement was reached on 30 June 2015. It was expected that the Council would approve the new Directive during summer and that the European Parliament would approve it in the autumn.

The Chair updated members on Solvency II equivalence decisions. Two equivalence decisions under Solvency II were adopted by the College on 5 June 2015. One decision grants 10-year provisional equivalence on group solvency requirement to Australia, Bermuda, Brazil, Canada, Mexico and the USA. The other decision grants full equivalence to Switzerland in all areas. The European Parliament and the Council have a period of three months to exercise their right of scrutiny, which can be extended by another three months. The item was set for formal adoption at the Council meeting on the same day (14 July 2015).

The Chair gave the state of play on EU-US matters. The Commission obtained a mandate from the Council on 21 April 2015 to start negotiations on reinsurance collateral, exchange of information and group supervision with the USA. The Chair explained that the Commission was ready to start negotiations and looking forward to the opening of negotiations with the USA. However, the US side was not ready at this point in time to move to formal negotiations, but hoped to be ready shortly. Commission staff had met representatives of the Federal Insurance Office, the US Trade Representative and the National Association of Insurance Commissioners, and US insurance representatives in May 2015. The meetings were useful to enhance mutual understanding, in particular on US group supervision.

The Chair provided an update on the Implementing Technical Standards (ITS) for Solvency II. The Commission had received a package of 10 ITS from EIOPA on 3 July 2015. The Commission was preparing these ITS for adoption, which was scheduled for October. Two more ITS on equity transitional and on ECAI mapping were expected to follow in the next weeks.

In response to questions raised by Member States, the Chair updated members on the technical adaptation of the EU-Switzerland agreement on non-life insurance, which is still being discussed, and whose adoption is expected for autumn 2015. The Chair also added that Commission staff were currently analysing comments received from Member States about the appropriateness of work on a recovery and resolution regime, following the discussion of this subject in the previous expert group.

4. Update by Member States on the transposition of Solvency II and phasing-in (Article 308a)

Member States were invited to provide an update on the status of their transposition of the Solvency II Directive, as amended. Seven Member States indicated that they had already transposed the Solvency II Directive. Six Member States expected to complete transposition during summer 2015. Fifteen Member States stated that they would complete transposition in the autumn of 2015.

A written question raised with the Commission by the financial services authority of one Member State relating to the transposition to the Solvency II Directive was presented to all members of the expert group. The question concerned the provisions of the Solvency II Directive on cross border insurance services and in particular Article 162. The Commission confirmed that this Article provides that a third-country insurance undertaking may only insure risks located in a Member State through a branch authorised by the competent supervisory authority of that Member State.

5. **Solvency II and long-term financing: securitisation**

Commission staff made a presentation of Commission's on-going work on the definition of "Simple, Transparent and Standardised" (STS) securitised products. The Commission explained that the definition was intended to apply to all sectors (banking, insurance and asset management). The calibration of the capital charges applicable to such STS products would be defined in the sectoral legislation, i.e. Solvency II for the insurance sector. The Commission intends to adopt in the autumn, as part of the Capital Market Union action plan, a proposal for a Regulation including the definition of STS securitised products.

Three Member States welcomed the initiative to set a common framework for securitisation across the financial sectors, and to tailor a specific treatment for STS securitised products.

6. **EIOPA's draft advice on the treatment of infrastructure investments**

The Chair invited EIOPA to present its draft advice on the treatment of infrastructure published on 2 July 2015 for comments until 9 August 2015. EIOPA's representative presented EIOPA's proposals for the establishment of a new infrastructure asset class in Solvency II. For eligible debt infrastructure investments, the representative explained that two approaches were considered to reduce the capital charges (one based on reduced spread risk, one based on reduced liquidity risk), and that EIOPA was still assessing to what extent these could be combined. For eligible equity investments, a reduction of the calibration to a level of 30%-39% was proposed. The EIOPA representative mentioned that the final EIOPA advice would be adopted at the end of September.

One Member State raised two questions in relation to EIOPA's proposals:

- How to ensure the consistent implementation of the criteria selected for the definition of infrastructure assets (for instance, on the robustness of the contract)?
- Whether EIOPA was proposing a binary treatment or whether there would be sensitivity in the proposed approach reflecting the wide spectrum of infrastructure projects?

EIOPA's representative explained that it would be the role of the supervisory authorities to ensure consistency in assessing the qualitative criteria. EIOPA's representative also explained that the criteria where indeed intended to be binary.

One Member State expressed full support for the initiative, highlighting the fact that insurers usually held assets on long terms. The Member State also made a number of comments on EIOPA's proposals:

- To consider relaxation of some of the criteria proposed for the definition of infrastructure assets;
- To consider further alleviation of the capital requirements for infrastructure equity investments;

- To consider extension of the proposed preferential treatment for debt infrastructure investments to unlisted debts;
- To consider the possibility to combine the two approaches proposed for the treatment of debt infrastructure investments (i.e. combine the reduction on the spread risk and on the liquidity risk).

Two Member States called for further data analyses and expressed concerns on whether the approach was prudent enough in relation to policyholder protection.

7. Consultation on the second package of delegated acts regarding third-country equivalence under Solvency II

The Chair explained that a second package of equivalence decisions was planned. Technical work was being carried out to assess the regimes of Bermuda, Japan and South Africa. EIOPA's reports on Japan and Bermuda were expected towards the end of July 2015. The Chair also mentioned that at that point in time the USA was not being considered for inclusion in the second wave of equivalence decisions. The Chair indicated that the Expert Group would be consulted again shortly, after completion of on-going technical work.

The Chair invited members to express their views on the list of countries considered for the second package of equivalence decisions.

One Member State asked if there would be a third package of equivalence decisions and if so which countries would be included. The Chair replied that there was no decision yet on those points.

There were no other comments.

8. Higher-loss absorbency (HLA) for globally systemic insurers

On 25 June 2015 the International Association of Insurance Supervisors (IAIS) published a consultation paper on Higher Loss Absorbency (HLA) for globally systemic insurers, with a deadline for comments of 21 August. The Commission invited members to express their views on the IAIS proposals for HLA.

Two Member States expressed concerns about the consistency and compatibility between Solvency II and the HLA proposals. Three Member State said that they considered that HLA should target activities which were deemed to be the source of systemic risk (Non-Traditional Non-Insurance activities (NTNI)). One Member State highlighted the fact that the IAIS was currently working on a review of the designation methodology for Globally Systemic Important Insurers (G-SII), including a new definition of NTNI activities. That Member State outlined the link and the need for consistency between the designation methodology and the design of HLA, and expressed concerns about the timing of the IAIS consultations (in August on HLA, in November on the designation methodology).

9. Financial Conglomerates Directive (FICOD)

Member State had received in advance a paper on FICOD with questions on the way forward with the directive and an accompanying Commission presentation. In general, Member States confirm that the areas for possible amendments of FICOD presented in the Commission report of 2012 remain relevant. Some Member States shared information on developments in their conglomerates markets. There was also a general request to address the role of The Single Supervisory Mechanism in a future amendment. On timing, Member State did not see particular urgency with the FICOD review.

As no further points were raised, the Chairman closed the meeting.