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**Draft decision points and conclusions
of the 34th meeting of the Insurance Committee**

Brussels, 26th November 2003

1. Agenda

The agenda for the meeting was adopted.

2. Minutes of the 33rd meeting

The revised minutes of the 33rd meeting were adopted.

3. The new Committee architecture and the post FSAP follow-up

The Chairman introduced the paper, reminding members of the original invitation by ECOFIN last year and the care taken by the Commission when proposing the package of measures to establish the new Committee Structure for financial services that Parliament's powers of co-decision were fully respected. Now that CEIOPS had been formally established and with enlargement beckoning, it was appropriate to move to a 1+1 membership formula. The (IC) Chairman congratulated the CEIOPS Chairman on his appointment. The latter provided details of CEIOPS administrative arrangements including the appointment of the members of the CEIOPS Bureau and the establishment of the Market Practitioners' Panel.

IC members agreed: to move to the 1+1 membership formula as from the next meeting, that the CEIOPS Chairman should receive a standing invitation to attend as an observer, and that new rules of procedure should be submitted to the IC for consideration next year.

The Chairman briefly reported on the Commission initiative, as part of the post-FSAP (Financial Services Action Plan) follow-up, to review the state of integration in EU financial markets. After the original 42 measures in the FSAP, it was now important to pause and reflect on the need for further action.

4. Accounting developments and Phase 1 of the IASB Insurance Project

The Commission highlighted the unanimous adoption at the July ARC (Accounting Regulatory Committee) meeting of all IAS/IFRS standards except IAS 32 and 39, as well as the ECOFIN mandated review of the operation of EFRAG and the IASB. Given that revised standards needed to be adopted by the IASB by next March, time was running short. Members' views were sought on some of the key issues, in particular, the resolution of the mismatch problem and conformity between the future IAS standards and the existing EU accounting and prudential directives.

Members agreed on the importance of a solution to the mismatch issue and generally hoped that that future changes to EU and national legislation could be kept to a minimum. With respect to the mismatch issue, a majority of the Members taking the floor expressed a clear preference for the establishment of a separate asset category. Another alternative would be to adapt the "held-to-maturity" category and "tainting" rules. One Member State pointed out that an alternative to finding a solution on the asset side of the mismatch problem could be to address the liability side and reminded Members of the needs of capital markets and investors. Valuing equity investments at historical cost was not logical in this context. Against this, other Member States referred to the parallelism with the valuation of banking loans and the difficulties of already changing the rules for liability valuation- a subject which would be addressed in Phase 2 of the IASB insurance Project.

The CEIOPS Chairman confirmed the controversial nature of the subject. Although many members were involved in the preparation of the IAIS comments letter, there was no official CEIOPS position. The use of two sets of accounts (one for financial reporting and one for prudential supervision) was undesirable, but might be unavoidable, if no reasonable compromise could be found.

The Commission thanked Members for their comments. There was a need to move quickly and keep legislative changes to a minimum in the interim phase. Participation in the dialogue with the IASB should be maintained and the success of the project was important for Solvency 2. The accounting sub-committee would re-discuss the subject early the following year.

5. Solvency 2

The Commission briefly outlined the proposed roadmap and confirmed a paper would be sent to Members before Christmas with some draft mandates for Pillar 2 issues and additional questions on Pillar 1 issues, preliminary to the drafting of the mandates. Members strongly supported the proposed roadmap but stressed and nuanced a number of issues.

There was a need for greater clarity and tight project management; duplication between level 2 and 3 should be avoided; preparation of the framework directive would facilitate future work organisation and the demarcation of the responsibilities of the various levels; while there was agreement on procedures, substantive issues still had to be decided; with respect to Pillar 2, further discussion was necessary on peer review.

Lessons that could be learned from the Basle 2 process were also highlighted and widely supported. These included the need for extensive consultation, quantitative impact assessment, the involvement of Finance Ministries (particularly with regard to the real economic impact of measures and the establishment of critical parameters such as the level of ruin probabilities), the avoidance of complex and over-prescriptive approaches, and the need to develop an approach that was administratively harmonious with proper risk management by an insurer. However, it was also important to remember the specificity of insurance and the nature of underwriting risks. Outside professional expertise should be sought. Supervisors also needed to be involved and while industry consultation was necessary, a consensual approach might not always be possible. While simplicity was desirable, in practice it might be difficult. Lastly, the timetable was ambitious.

The Commission agreed on the need for tight project management. The involvement of Finance Ministries would be strengthened by the new "1+1" membership arrangements. The "Christmas" paper would clarify issues. Coordination between levels would be promoted by cross-CEIOPS and Commission participation in working groups at the different levels. The duplication problem was more apparent than real and would cease after mandates had been adopted. The Commission noted the need for early consultation on major political issues.

6. Enlargement and Implementation of EU legislation in Accession countries

The Commission observed the good progress achieved since the last IC, but given the imminence of accession there was to speed up the process and avoid potential enforcement action. One Accession country confirmed that legislation had been approved by the lower house and had now been submitted to the Senate. The Commission noted that Commissioner Bolkestein had written to the Hungarian Finance Minister regarding supervisory developments.

7. Member's papers

The Commission has always welcomed papers by Members.

The UK introduced the paper, emphasising the importance of not just adopting legislation in the FSAP but of also ensuring its effective enforcement. This was an issue for both Member States and Accession countries. Members congratulated the UK on the high-quality paper and agreed it was important to consider enforcement issues as a regular agenda item. The paper would be a valuable contribution for the FSAP review. While the paper was very complete, members thought it important to add the objective of policyholder protection. Some issues were cross-sectoral in nature. One Member State had reservations about institutionalising mechanisms for private sector complaints. Another had concerns with the references to competition.

The UK thanked Members for their comments and agreed to add policyholder protection. The UK took the view that competition favoured consumers. The Commission noted that some of the suggestions were already being carried out by the Commission (e.g. indicator studies) but would reflect on an improved 6 monthly scoreboard and come back with proposals on the way forward. The importance of effective enforcement was identified in level 4 of the Lamfalussy approach. The subject would certainly be re-discussed in the future. However, two points needed mentioning. First, Commission resources were limited and there would already be constrained by FSAP completion and Accession. Secondly, Member States could also undertake measures at national level to improve enforcement

France explained its paper addressed life assurance contracts linked to internal investment funds. The rules applying to French contracts were stricter and provided greater information to policyholders. This contrasted with the position for some products being sold on a freedom of services basis. This raised arbitrage issues. CEIOPS should be mandated to study the issues and make legislative proposals.

The French paper was well-received and its analysis praised. Some Member States supported a full CEIOPS mandate on the grounds of consumer protection and the need for greater harmonisation. Other Member States were hesitant. Further discussion was required at level 2 before a clear mandate could be drawn up. The real issue was one of transparency. Product regulation should be avoided. Furthermore, sectoral arbitrage would be studied within Solvency 2 which would already impose a heavy burden on CEIOPS.

A Member State suggested that CEIOPS could carry out a factual study without making policy recommendations. The CEIOPS Chairman noted that in some countries these type of contracts were dominant, whilst in others they had minimal importance. It would be useful to carry out a fact-finding analysis first. Furthermore, under the Lamfalussy approach, CEIOPS did not require a level 2 approved mandate to justify work on the convergence of supervisory practices.

The Commission thanked Members for their comments. The subject would be studied in the course of Solvency 2 and it would be appropriate then to prepare a precise mandate. Nevertheless, in the meantime the IC minutes should record that CEIOPS had been requested to undertake an analysis. Subsequently a decision could be taken on further steps.

8. AOB

Proposal for a Directive eliminating gender discrimination

The Commission explained that the College had very recently adopted a proposal for a directive¹ to eliminate gender discrimination. The Commission chair welcomed the representative from the Directorate General for Employment and Social Affairs who made a presentation on the proposal. The official clarified the background to the proposal. After the Amsterdam Treaty, Article 13 of the European Community Treaty conferred on the Council the power to take appropriate action to combat discrimination based on, among other grounds, sex. This proposal targeted goods and services. As regards insurance, the proposal would prohibit the use of actuarial factors based on sex. However, there would be no retro-activity and there would be a 6 year implementation period.

Members raised no questions and the Commission chair thanked the representative from the Directorate General for Employment and Social Affairs.

IC Work Programme

The Chair indicated that the follow-up work on the UK paper and the changes to the IC rules would be incorporated in the work programme. One Member State called for greater coordination on environmental liability, gender discrimination and competition policy. Another Member State suggested adding the study of natural catastrophes to point 5 of the work programme. The proposal was accepted and the Chair asked the Member State to submit a written proposal.

Extension of study of insurance guarantee schemes to pension funds

In the light of the recent adoption of Directive 2003/41/EC on occupational pensions, the Chair stated that it seemed appropriate to extend the existing study on insurance guarantee schemes to pensions. A large number of Members expressed reservations for a variety of reasons: pensions were different and more complex, the sub-group already had a heavy workload and a separate investigation was required, there was no need for EU legislation. One Member State pointed that there seemed to be some similarities and that it would be helpful to know what existed at national level.

¹ Proposal for a Council Directive implementing the principle of equal treatment between men and women in the access and supply of goods and services, COM(2003)657 final, Brussels 5.11.2003.

The Chair noted Members' views and concluded that extension of the current study to pensions would be premature. Nevertheless, the topic would have to be addressed at some future stage, but in the meantime an exchange of information was an excellent idea.

EU-US regulatory Dialogue

The Commission underlined the importance of insurance and reinsurance to the dialogue. Member States agreed on the importance of this work and of continuing with the insurance dialogue. The need for progress was evident, but this was complicated by the US regulatory structure. The CEIOPS Chairman provided brief details of CEIOPS contacts with the NAIC and promised to keep the Commission informed.

Members agreed to release all papers.