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**Draft decision points and conclusions
of the 35th meeting of the Insurance Committee**

Brussels, 30th June 2004

1. **Agenda**

The Chairman warmly welcomed the new IC Members. The Accession of the 10 new Member States was placing considerable pressure on the Commission translation facilities. Consequently IC papers were only available in the original language.

The agenda for the meeting was adopted.

2. **Minutes of the 34th meeting**

The revised minutes of the 34th meeting were adopted.

3. **FSAP follow-up- Report of Expert Group on Insurance and Pensions**

The Chairman provided an overview of recent developments, including the High Level Conference on 22/23 June, which was very well-received, the Tenth FSAP Progress Report and the publication of the FIM (Financial Integration Monitor). He thanked the Secretary, as draftsman to the Expert Group on Insurance and Pensions, and explained that the Report and its conclusions were open for public consultation until 10 September. On the basis of the Report and the comments received as well as wider consultation, the Commission services would prepare a paper on the follow-up to the current FSAP for the incoming College.

The Secretary briefly presented the Report's main conclusions: EU financial market integration had occurred primarily through cross-border acquisition; there was a need for a regulatory pause (with the exception of Solvency II, Reinsurance and International Accounting Standards); the focus should be on consistent implementation and effective enforcement; the prudential framework for cross-border groups should be streamlined; future policy measures should be subject to widespread consultation and evidence-based justification as well as tested for business impact; the regulatory approach should be flexible. The Chairman added out that the High Level Conference had also identified the importance of retail market integration.

Member States expressed wide support for the Report, but nuanced some conclusions or highlighted areas needing strengthening.

Consumers were not adequately represented in the Report's recommendations. Similarly, the voice of niche players and the many small and medium sized undertakings was not sufficiently reflected. While some Member States fully endorsed the need to simplify insurance group supervision and pointed to the role of the lead supervisor in the Financial Conglomerates Directive, others had reservations regarding any diminution of national supervisory sovereignty. The subject needed careful analysis. Some Member States stressed the importance of meeting the demographic challenge for pension provision and the need for appropriate research. Especially the impact on the European economy of the future "melt-down process" (i.e. if providers have to sell assets in order to meet the commitments towards pensioners) has to be investigated. Undertakings were responsible to shareholders and were correspondingly constrained in their action to meet societal needs. Similarly, there were limitations to self-regulation. E-commerce could facilitate cross-border retail selling. However, the current reality was that Member States received hundreds of notifications for freedom of services which gave rise to considerable administrative expense for little or no cross-border business.

In responding, the Chairman confirmed that the Report gave much food for thought. As regards hearing the consumer voice, FIN-USE could help and enjoyed a significant study budget. Consistent implementation and effective enforcement was clearly a priority. The role of the lead supervisor was sensitive and had also been debated at the EFC. The Commission favoured enhanced supervisory cooperation in a group context. Adoption of the European Company Statute could also raise sensitive home/host issues, but while real problems needed to be addressed, it was important not to undermine established principles such as the mutual recognition of prudential supervision.

4. Accounting developments

The Chairman introduced the Commission paper: most of the problems with IAS 32 appeared to be solved, IAS 39 was currently the subject of much high level discussion and IFRS 4 could be considered acceptable but only as a temporary solution pending proper resolution in Phase II of the IASB insurance accounting project.

The CEIOPS President confirmed that supervisors were closely following developments. However, the situation was subject to rapid change. From a prudential perspective, supervisors would be unable to accept certain accounting items or approaches for supervisory purposes, e.g. the treatment of goodwill or the use of own-credit risk to reduce technical provisions.

One Member state expressed satisfaction with the proposed solution for IAS 32, but this seemed more to affect banks. The situation on IAS 39 was more complicated and involved another Ministry. However, it was important to maintain pressure on the IASB to find proper solutions.

5. Solvency 2

The Chairman briefly introduced the revised road map for Solvency 2 as well as the annexed documents: the general Framework for consultation, the first 6 specific calls for advice from CEIOPS and the proposed schedule of calls for advice. Solvency 2 was an ambitious and challenging project, which called for a pragmatic approach.

Member States expressed strong support for the project and endorsed the proposed approach. However, they drew attention to a number of issues and concerns.

Now that the 'Basle 2' proposals were close to fruition, there was a need to accelerate work on Solvency 2. The complexity and scale of the project required commensurate resources. The proposed timing was challenging. Some Member considered it may prove over-ambitious, whilst other stressed the merits of a 'stretch target'. The importance of 'real-time' industry consultation, both at levels 2 and 3 of the future Lamfalussy process, was emphasised. There was a need for careful coordination and cooperation. Greater clarity of the IC role would be helpful, since the IC had a major role to play in guiding, steering and tasking CEIOPS' work.

The need for QIS (quantitative impact studies) and simulation studies was highlighted. One Member State highlighted the importance to have a standard risk model available to compute (target) capital requirements, and expressed concern that its development was not explicitly addressed in the Services' documents. Some expressed concern that pension funds had been introduced into the scope of Solvency 2, whilst others felt that this was necessary to avoid competition distortions between different pension

providers. Member States agreed that pension providers could be addressed later, but one Member State pointed to the danger that decisions on solvency capital requirements for life assurers should not pre-judge the later position for pension funds.

A number of Member States drew attention to corporate governance requirements. Consequently, the call for advice to CEIOPS should be appropriately expanded and a specific article, mirroring that in the Financial Conglomerates Directive, should be introduced into the proposal for a Framework Directive. Some also wondered why the first wave of calls for advice had addressed pillar 2 topics rather than pillar 1; whilst other Member States supported the Commission's approach, explaining that it would have been difficult to have proceeded otherwise. A number of Member States highlighted the problem of addressing ALM (asset-liability management) before Pillar 1 capital requirements had been examined.

Individual Member States also underlined a variety of points e.g.: the high quality of Commission papers; the desirability of keeping open the option to have a single rather than a double solvency capital requirement; the need to address group supervisory arrangements- preferably on a consolidated basis; coherency with IAIS standards; supervisory convergence; and further project work should clearly respect the agreed underlying principles for Solvency 2 and avoid sectoral regulatory arbitrage.

The CEIOPS Chairman also stressed the significance of the Solvency 2 project and clarified that 5 working groups had been established. Whilst good progress was being achieved, there was a danger of divergence. The Commission's papers struck the correct balance. In an ideal world, calls for advice would have started with Pillar 1 rather than Pillar 2 issues, but this was not practical. If subsequent Pillar 1 work impacted on Pillar 2 advice already given, CEIOPS could amend the original advice provided. However, CEIOPS and the Commission needed to deploy resources efficiently and this was a topic CEIOPS would again discuss on a bilateral basis with the Commission. Corporate governance was an evolving process. The Financial Stability Working Group of CEIOPS would act as a hub for data collection in QIS. The IAIS Solvency Group had recently decided to adopt a three-pillar approach.

The Commission thanked Member States for the extensive support expressed, but in responding the Commission would address the concerns identified. It was important to remain pragmatic and result-orientated. The objective was to prepare a Framework Directive for the end of next year and to adopt the detailed rules later. Undoubtedly this was ambitious; an extended QIS was not possible within this time frame and the project also depended on international developments, particularly in the accounting area. But ambition was necessary to maintain project momentum. The aim was to consult CEIOPS on all the detailed areas identified in the schedule. CEIOPS advice would be extremely helpful to the Commission in determining the optimal balance between level 1 legislation and later, level 2 detailed measures.

Considerable progress had been made in the last 12 months and this would speed later work. A series of Commission papers had been published as had interested parties' comments. The Commission would keep the IC fully informed on developments. The Framework for consultation was a dynamic document and changes would be submitted to the IC. Reporting by CEIOPS was designed to immediately precede the next two meetings of the IC. The Commission would seek to accelerate the preparation of the next two waves of calls for advice.

The first wave had necessarily focussed on Pillar 2 issues. Very difficult technical issues would be confronted in Pillar 1, e.g. the overall level of prudence for the solvency margin and the level of prudence in technical provisions. The next IC sub-committee meeting would help prepare the corresponding calls for advice. As the project developed, work would automatically flow from IC sub-committee level to the various CEIOPS working groups. As regards pensions, these had only been mentioned for completeness in the paper. This was to denote a separate and important topic that should be considered at a later date, but not now. Group issues would be addressed by a specific call for advice. As regards QIS, the Commission fully shared the views of Member States on their importance. However, this could only be addressed when there was greater clarity on the proposed capital requirements and methodology. This work could only be carried out by CEIOPS and CEIOPS was therefore encouraged to already reflect on data requirements and on how data comparability and consistency could be achieved.

The Chairman concluded the session thanking Member States for their support for the Roadmap, the Framework for Consultation and the first wave of individual calls for advice. Much detailed work lay ahead.

6. Insurance guarantee schemes

The Chairman reported on the progress achieved by the working group on insurance guarantees. The further analysis carried out subsequent to the request of the IC in April 2003 demonstrated that ‘moral hazard’ did not appear to be, for the large majority of delegations, a major difficulty to the establishment of guarantee schemes. The research conducted by the Commission also showed that the benefits of a guarantee scheme would outweigh the costs. Members’ views were requested.

Member State opinion was divided. The following arguments against a guarantee scheme were made: there was a catastrophe danger; a burden would be placed on well-managed undertakings; risks would be exported; guarantees in the banking sector were limited; insolvency arrangements already existed in the insurance sector; where one undertaking failed, portfolio transfer to a healthy undertaking was preferable; it was illogical to advocate more group supervision responsibility, while leaving ‘solo’ arrangements responsible for individual undertaking failure.

However, the majority of Member States favoured continuing work. The following arguments in favour of a guarantee scheme were made: this was necessary to protect consumers; national insurance guarantee arrangements already existed; EU arrangements existed in the banking and securities sectors; this would stimulate freedom of services business; moral hazard was not unique to insurance guarantee schemes but was inherent in any insurance activity; guarantee arrangements were necessary for compulsory arrangements.

Some Member States requested more clarity on the proposal and canvassing industry and consumer opinion. One Member State pointed to the need for a pragmatic approach. If insolvency was not possible, no guarantee scheme was necessary; on the other hand, if insurers were allowed to fail, customers needed to be protected and a some form of guarantee arrangements were required.

The Chairman reminded Members that the arguments for and against an EU initiative were well-rehearsed. Given that the same majority / minority position had existed at working group level, he concluded that work should be progressed to develop greater clarity based on a minimum harmonisation approach.

7. EFRP presentation of EIORP Model

The Commission welcomed Ms. Verhaegen, EFRP (European Federation for Retirement Provision) Secretary General, and Mr. Feely, Chairman, EIORP 2005 Working Group-EFRP. The EFRP representatives made a presentation on the EFRP and the EFRP model (EIORP 2005) for pan-European pensions. The EFRP representatives highlighted the need for practical and consistent implementation of the IORP (Institutions for Occupational Retirement Provision) Directive (2003/41/EC).

The Chairman and some Member States raised questions. National ring-fencing was the biggest challenge to the Directive's successful implementation. As regards solvency margin requirements, the IORP Directive was based on mutual recognition. With respect to the differential treatment between national arrangements and institutions benefiting under the IORP Directive, the position in the Directive was defensible. From a competitiveness perspective, there was no minimum size in membership terms for a national section. Undoubtedly, there would be significant benefits for large multi-nationals, but EFRP studies had shown that some schemes with small national sections could also benefit. Certainly, the EIORP 2005 arrangements would be no more unwieldy than a series of local alternatives. Furthermore, financial services providers could offer pan-European products. On the risks of transfer of investment from small to large markets, European funds would be invested in a variety of assets: some could be in liquid capital markets but assets could also be invested in other markets. All communication with members would be in their own language, but economies of scale would exist in relation to other scheme documentation e.g. the trust deed.

IC Members and the Chairman thanked EFRP representatives for their presentations. Given the demographics, the subject would grow in importance.

8. AOB

Proposal for a Directive eliminating gender discrimination

The Chairman explained that negotiations were taking place between the EP and the Council on the Commission proposal for a directive¹ to eliminate gender discrimination. This proposal prohibits the use of gender as a parameter for premium determination. This aspect has proved to be very sensitive in the current Council and EP negotiations with a very large number of Member States having reservations on this particular point.

One Member State invited the IC Chairman to write to the Commissioner responsible for the proposal to express support for the use of gender in insurance pricing setting where this is objectively justified, using relevant and reliable data. A letter to this

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.

effect had been circulated to IC Members. This invitation was supported by a number of Member States.

The Chairman explained that notwithstanding the prior expressed views of the IC and DG MARKT, the College had favoured the adoption of the proposal in its current form. It would not be appropriate for the IC to intervene in the Council and EP negotiations; nor for the Commission to comment on its own proposal.

Publication of IC Papers

Members agreed to release all IC Papers.