



MARKT/2521/05 - EN

Orig.
26 September 2005

**Draft Minutes of the 1st meeting of the
European Insurance and Occupational Pensions Committee**
Brussels, 29 June 2005

Opening and welcome

The meeting was opened and chaired by Mr Elemer Tertak, Director for Financial Institutions in the Internal Market Directorate-General.

Mr Tertak, who had only recently taken up his functions, introduced himself to the Committee and welcomed the delegations, including representatives of Bulgaria and Romania, to this first meeting of the EIOPC. The Chairman welcomed Mr Corinti, representing CEIOPS, and sent the Committee's best wishes to Mr Bjerre-Nielsen for his full recovery from recent illness.

The old Insurance Committee had now become a fully fledged Lamfalussy Committee and, although not much would change in the short term regarding the way of working, the EIOPC would in the longer term have a major role in the adoption of implementing measures within the framework of the Solvency II Directive.

Many members of the Committee welcomed Mr Tertak and congratulated him on his appointment.

1. Agenda

The agenda for the meeting was adopted without comment.

2. Minutes of the 37th meeting of the Insurance Committee

No requests for changes to the draft minutes were raised and the minutes of the 37th meeting of the Insurance Committee were adopted. The minutes would be put on the Commission's insurance website.

3. Solvency II

The Chairman introduced the Solvency II agenda item. This was in three parts:

1. Final amendments to the Framework for Consultation: The proposed amendments had been discussed several times with Member States and had received considerable support. The draft document had also been out for public consultation and stakeholders broadly agreed. After a final discussion in the EIOPC, the document would be finalised and formally sent to CEIOPS.

2. Legislative approach and possible impact on timing: The structure of the Solvency II Framework Directive had been discussed at the last Insurance Committee meeting as well as in the Solvency Working Group on 17 May. Member States had expressed the view that a more radical approach (i.e. consolidating most of the insurance acquis into one directive) should be studied. The Services had examined this request and the results would be presented at this meeting along with a tentative recommendation. This debate was crucial as the decision was likely to have an impact on the overall timing of the Solvency II project.

3. The Impact Assessment and Quantitative Impact Studies for the Solvency II project: In the Roadmap, the Commission Services had promised an update on the preparations for impact assessments and there would be an oral presentation by Commission staff.

3.1 Final amendments to the Framework for Consultation

The Commission pointed out that the objective was to assess whether the comments made in the last meeting had been properly reflected in the Framework for Consultation. It was not the intention to re-open the debate.

Several Member States suggested that the importance of consumer protection be highlighted in the introductory paragraph rather than in the first paragraph. Another Member State proposed to include the better allocation of capital in the overall objectives. The Commission could accept these suggestions.

Concerning paragraph 6.3, one Member State suggested that it be clarified in the first sentence that solo supervision should remain ‘in principle’ the responsibility and task of the national supervisor, as groups should be provided with the possibility to organise themselves as efficiently as possible. However, a number of other Member States believed the text was clear enough and suggested that the present text be retained. The Commission pointed out that the word ‘however’ in the last sentence already implied that the first sentence set out a principle and preferred to leave the text as it was.

Several Member States took the view that the reference to appropriate harmonisation in paragraph 8 did not reflect the principle that a higher level of harmonisation should be sought than was currently the case. Another Member State believed on the contrary that the revised text already went further than agreed. The Commission proposed to amend the text in such a way that the main thrust of more harmonised requirements was reflected.

Another Member State suggested clarifying paragraphs 16 and 17 by adding that the mentioned confidence levels only provided a working hypothesis. The Commission could accept this suggestion.

Although Member States agreed that a breach of the MCR should lead to ultimate supervisory action, some Member States took the view that withdrawal of the authorisation was not the only solution. However, one Member State supported the amendment as, in the final analysis, there was always a level below which the authorisation would be withdrawn, which should be the MCR. The April meeting of the Committee had concluded that Member States agreed that the MCR should be an absolute minimum, below which the authorisation of the undertaking should be withdrawn and the undertaking removed from the market. However, it was generally recognised that putting an undertaking in run-off or under public administration might achieve the same result. The Commission would amend this paragraph appropriately.

3.2 Legislative approach and possible impact on timing

The Commission had presented in the Insurance Committee on 8 April 2005 three different possible legislative approaches to the Solvency II project, as well as a first draft outline of a Framework Directive. The Commission’s preferred option had been to prepare several framework directives – one Solvency II directive for Life Assurance and one for Non-life Insurance (possibly including Reinsurance). An additional directive would amend other directives as necessary. Some Member States had expressed their clear preference for another approach, notably to start from a blank sheet of paper and recast and codify all the relevant insurance directives (Life, Non-life insurance, Reinsurance, Groups). This view had been confirmed in the Solvency Working Group on 17 May where Members had also made clear that any discussions on the draft outline of a Framework Directive were premature until the Commission had received the CEIOPS responses to the calls for advice.

As agreed in the Working Group on 17 May, the Commission had now as a first step made a comparison of the Life Assurance Directive and the Non-Life Insurance Directives to see

whether a codification would be feasible. As a tentative conclusion, the Commission Services considered that a complete recast and codification would be possible, but would be very work-intensive. References, cross-references and recitals would have to be checked. It would have to be seen where an alignment of wording between Life and Non-life was necessary (or desirable) and possible as part of the codification. A decision would have to be taken on whether obsolete articles should be abolished and on whether amendments following from recently adopted directives (such as the Lamfalussy Directive, the Financial Conglomerates Directive and the Reinsurance Directive) would have to be taken into account. In addition, the Services tentatively concluded that the current structure should be maintained in the new codified single Directive.

The Solvency II related changes could not be introduced into the directive text until the Commission had received the CEIOPS advice and the codification/recast had been completed. This did not mean an interruption of the work on Solvency II, which should be continued in parallel with the codification/recast exercise. The adjusted approach should permit better preparation of the Solvency II project and especially of the impact assessment. This would also make it easier to assess the practical consequences of the project.

If the suggested approach were followed, the Final Framework Directive would be a “mixed” Lamfalussy Directive. It was the Services’ view that only the new, added articles related to Solvency II should be split into levels 1 and 2, where necessary. This implied that Articles “carried over” from the existing Directives should all be considered to be level 1 provisions in the final Framework Directive.

The current roadmap foresaw a final draft of the framework Directive for April 2006 and the adoption by the Commission for October 2006. Considering the additional preparatory work needed for the codification, the current roadmap would no longer be feasible with regard to the adoption of the Framework Directive. The Services would now aim to present a first draft of a codified single Directive at the EIOPC meeting on 30 November 2005. After discussions with Member States, this draft would need to be finalized before it could be taken as a basis for the Solvency II project. The additional time required would to a considerable extent depend on Member States’ willingness and commitment not to renegotiate existing provisions. The Services now believed that adoption by the College of Commissioners of the Solvency II framework Directive could possibly take place around mid 2007.

If the EIOPC agreed, the Commission Services would start working on the codification exercise. An update of the work and a draft would be provided to the EIOPC in November.

A number of delegations took the floor to welcome the Commission’s change of approach, while recognising the scale of the undertaking. There was support for an updating of the Roadmap for every meeting of the Committee.

One delegation wondered whether the codification exercise could not be made more simple than as described by the Commission, while another warned against devoting too much time to this exercise.

One delegation clearly disagreed with the new timetable, but others could accept it provided there was no further delay.

There was general agreement not to reopen discussions on existing provisions of the present directives.

Several delegations raised the issue of the division between level 1 and level 2 measures and called for further thought on this question.

Summing-up, the Commission noted broad agreement on its proposed course of action. The scale of the work should not be underestimated and the end-November deadline was tight. The “old-style” comitology would have to be taken over as it stood and old texts could not be rewritten in Lamfalussy style.

3.3 *The Impact Assessment and Quantitative Impact Studies for the Solvency II project:*

The Commission Services gave an update on current preparations for the impact assessment that should be presented at the same time as the proposal for a directive. The Commission Services appreciated the efforts of CEIOPS to prepare the quantitative impact studies calculations needed for the impact assessment.

A preparatory meeting between Commission and CEIOPS specialists would take place on 8 July 2005 in Brussels. The Commission Services would prepare a document outlining in more detail what issues they would like CEIOPS to investigate. The roadmap would be revised in order to highlight deadlines in respect of the simulations.

One delegation asked about the involvement of industry in the simulations. The Commission Services answered that CEIOPS had intensive contacts with industry organisations on the issue. However, it was also important that requests to industry were carefully prepared in order not to overburden companies with repeated calls for contributions.

4. Solvency II presentation by the European Insurance Committee (CEA)

A presentation on Solvency II was made by the European Insurance Committee (CEA) represented by the President of the CEA, Gérard de la Martinière, and the Chairman of the CEA Solvency II Steering Group.

The support and commitment of the CEA to the Solvency II project was clear although a clear common position of the insurance industry on a number of basic points remained to be reached.

The CEA presentational material was available on their website at <http://www.cea.assur.org/>.

5. Draft Rules of Procedure of the EIOPC

The Commission presented its proposal for the rules of procedure of the EIOPC.

In accordance with Articles 3 and 4 of the Commission Decision of 5 November 2003 establishing the EIOPC, the Committee had to adopt its rules of procedure. Those articles already lay down certain basic features of the Committee: it was composed of high-level representatives of Member States; it was chaired by the Commission and met at regular intervals or whenever the situation demanded; the chairperson of CEIOPS participated as an observer; the Commission could invite experts and observers and the Commission provided the Secretariat.

A standard set of the rules of procedure to be adopted by the approximately 250 committees with implementing powers under the comitology system had been approved by the Commission in January 2001. This model has been distributed as a reference document and had to be followed as far as possible. The document before the Committee was therefore based on this model. The rules of procedures of the European Securities Committee (ESC), which had more experience in the exercise of comitology powers, had also been taken into account.

One delegation asked about the EIOPC's advisory role. The Commission replied that the EIOPC would of course continue its advisory work and for the foreseeable future this would be its main role. In formal comitology terms the EIOPC was a regulatory rather than an advisory committee. These terms related to the procedures for the adoption of implementing measures.

Another delegation asked about differences in the draft rules of procedure, as compared with those of the European Securities Committee (ESC).

The ESC had adopted certain working arrangements when it adopted its rules of procedure. These related to the detailed arrangements for the ESC's heavy workload relating to the adoption of implementing measures. Since quite some time would elapse before the EIOPC would have a similar workload following the adoption of the Solvency II Framework Directive, it had not been considered necessary to envisage ESC-type working arrangements at this stage.

At the conclusion of this discussion, the Committee formally adopted the Rules of Procedure as proposed by the Commission.

6. Compulsory insurance provisions in Article 27 of the proposed Directive on services in the internal market

The Commission opened this agenda item, which had been included at the request of two Member States, and noted that the insurance industry via the CEA has already made known its concerns regarding the workability of the proposed Article 27, raising a number of technical objections.

The Services proposal, like insurance, fell within the field of competence of the Internal Market DG.

It was the Commission services' view that, since the Services Directive affected many sectors and many policy areas, it was best that discussions of the Services Directive with the Member States should take place in the competent Council working group where Member States could bring experts from the capitals if specific aspects were being discussed. The Commission believed that it would be wise to abide by this approach also with respect to Article 27. Indeed, a specific meeting dedicated to Article 27 would be held on 14 July.

The Commission services therefore proposed simply to take note of Member States' views at this stage. However, the Commission believed that it would be very useful to have a complete picture of the situation as regards mandatory liability insurances in all the Member States. Member States were therefore requested to send to the Commission by 1 September a list of all the activities and professions which were subject in that Member State to mandatory liability insurance. It was also suggested that Bulgaria and Romania and the EEA States send in the same information so that a complete picture of the situation could be obtained.

The Commission further noted that it would also be helpful to have information on the cases where liability insurance was required not on the basis of legal texts but on the basis of the rules of self-regulatory organisations or professional bodies.

The delegations that had requested the inclusion of this point referred to their joint letter, which had been distributed.

Among the delegations there were two schools of thought. One group of Member States stressed the problems of the current proposed Article 27 and the need to look for alternatives, while another group warned against an over-hasty calling into question of the article.

One delegation stressed, with some support, that it was impossible for the EIOPC to have an overall view of the services proposal.

All delegations agreed on the usefulness of carrying out a fact-finding exercise into the range of compulsory liability insurances in the Member States and agreed to send their lists of obligatory insurances to the Commission by 1 September.

Concluding the debate, the Commission stressed that the merits of Article 27 should be discussed in the appropriate forum, namely the Council group, and urged Member States, in the interests of an informed debate, to send the appropriate experts to the July 14 meeting.

7. Prudential treatment of deeply subordinated debt

The Member State requesting the inclusion of this point referred to the issuance by insurance companies in its territory of deeply subordinated debt; this had been authorised by a law of August 2003. The Solvency II project was long term and the current rules would still apply for some considerable time. A modest amendment to those rules was being sought.

It was argued that this type of instrument could be as safe as own funds and was the nearest element to share capital without actually being share capital. It was suggested that the Life and Non-Life Directives could be amended via comitology to formally admit this type of instrument as an element, up to a certain percentage, of the solvency margin.

All the delegations which took the floor on this point expressed an open position on this point. It was noted by one delegation that the newly announced Solvency II consolidation exercise could not be completed until this comitology procedure, if launched, had been completed.

Another delegation asked whether the Commission's Legal Service had been consulted on the possible use of comitology powers. The same delegation stressed the need to ensure consistency with the Basel work on the own funds review.

There was general agreement that in any case the views of CEIOPS should be obtained. The CEIOPS representative noted that his Committee was already expected to produce an answer on capital elements. He wondered whether the issue of deeply subordinated debt should be covered as part of that work or as a separate issue.

The Commission requested a separate answer on this particular issue and noted that the EIOPC would come back to this matter at a future meeting. The Commission services noted that they would have to consider their existing workload, the time such a procedure might take and how this tied in with the Solvency II project as a whole.

8. Any other business

The Commission reported on a number of issues:

1. Motor insurance report

The Commission was in the process of preparing a report to the European Parliament and Council covering two motor insurance issues, firstly on the compensation body provided for in Article 6 of the 4th Motor Insurance Directive and its effectiveness and secondly on the question of the insurance of trailers following the request of the European Parliament during the 2nd reading of the 5th Motor Insurance Directive. The Commission had consulted the Member States and the CEA via questionnaires and had also launched an online public consultation in order to gather the views of all interested parties on these two issues. This consultation was open until 15 July.

2. Uninsured vehicles in the EU

Article 3 of the 1st Motor Insurance Directive stipulated that each Member State had to take appropriate measures to ensure that civil liability was covered by insurance in respect of the use of vehicles based in its territory. Although an estimation of the number of uninsured cars in Europe had been compiled by the Council of Bureaux, there were currently no comparable figures in this respect. The Commission therefore wished to consult the Member States to gather more detailed information about the number of uninsured cars circulating in the EU and about the measures taken at national level to deal with this problem. The Commission would send an official request with a deadline of 1 September.

3. Exclusion of small mutuals from the insurance Directives

Article 3 of the First Non-Life Directive 73/249/EEC, as amended e.g. by the Solvency I Directive 2002/13/EC, excluded certain undertakings, inter alia small mutuals, from its scope of application, provided that certain conditions were fulfilled. A similar exclusion was to be found in Article 3 of the Recast Life Assurance Directive 2002/83/EC. As part of the Solvency II work (third wave of calls for advice) the Commission had asked CEIOPS to examine the situation of small undertakings and assess whether special treatment for them was needed. Against this background and in light of the recent arrival of the 10 new Member States, the Services considered it useful to examine the practical impact of Article 3 and to receive an update from Member States on their understanding and application of Article 3 of the Recast Life and Non-Life Directives. The Commission was therefore requesting EIOPC Members to inform the Commission Services in writing whether they had any insurance undertakings falling under the abovementioned exceptions. Where those excluded undertakings were regulated and supervised, Member States were invited to describe briefly the applicable legal framework. Member States were requested to provide their input by 1 September.

Newsletter

The Chairman drew the attention of delegates to the traditional Insurance Committee newsletter which had been circulated.

Publication of EIOPC Papers

No further business being raised the Chairman noted the agreement of Members for the release all EIOPC papers and closed the meeting, the next meeting of the EIOPC being scheduled for 30 November 2005.