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**Draft decision points and conclusions
of the 37th meeting of the Insurance Committee**

Brussels, 8 April 2005

Opening and welcome

The meeting was opened and chaired during the morning session by Mr Alexander Schaub, Director-General of the Internal Market DG. Mr Karel Van Hulle, Head of the Insurance and Pensions Unit, chaired the afternoon session.

The Chairman welcomed new and old delegates to what was now certain to be the last meeting of the Insurance Committee before it was replaced by the European Insurance and Occupational Pensions Committee (EIOPC). The Chairman also welcomed Mr Henrik Bjerre-Nielsen, Chairman of CEIOPS.

Poland had announced that it would not be represented at the meeting but had sent its written comments on the Solvency II items.

1. Agenda

The agenda for the meeting was adopted without comment.

2. Minutes of the 36th meeting

The revised minutes of the 36th meeting, incorporating amendments requested by two Member States, relating to SMEs, the use of Basel II as a model and the CEIOPS budget, were adopted. The minutes as amended would be put on the Commission's insurance website.

3. The new Committee structure – Commission report on recent developments

The Chairman reported that the Directive extending the Lamfalussy structures to the insurance and pensions sector had been adopted on 9 March 2005 (Directive 2005/1/EC) and had been published in Official Journal No L 79 on 24 March 2005. It would enter into force on the twentieth day following that of its publication, namely on 13 April 2005.

The Chairman recalled that the European Insurance and Occupational Pensions Committee (EIOPC) had been established by Commission Decision 2004/9/EC of 5 November 2003. It had been stipulated, however, that that Decision would "enter into force on the same day as the entry into force of any directive amending the purely advisory functions of the Insurance Committee".

As a result the Insurance Committee would officially be replaced by the EIOPC on 13 April 2005. The current meeting was therefore the final meeting of the Insurance Committee. The first meeting of the EIOPC would be that scheduled for 29 June 2005. The EIOPC would have to adopt its rules of procedure. In due course the Commission would present a draft based on the standard rules of procedure adopted by the Commission.

4. Commission update on the post-FSAP strategy

The Chairman reported on the progress of the FSAP follow-up work. The strategy for the next five years was being prepared with maximum transparency and would be very different to the initial FSAP period. That had been a period of law-making, while the leitmotifs for the next period would be dynamic consolidation and correct transposition.

It was over simplified to speak only of a legislative pause. Current projects would be continued and there would be a limited number of new projects. However, in accordance with the principle of better regulation, no new project would be decided without a prior impact assessment and without a clear conviction that the proposed measure was needed.

The Chairman laid great emphasis on correct and timely transposition. There was a question of credibility here and the current record had to be improved. The answer was not simply an increased number of infringement procedures. A greater sense of identification with the implementation work was needed and closer contacts between supervisors were necessary. The Commission would try to organise this network.

Another important aspect of better regulation was the economic policy quality of the rules in order to create a high quality regulatory environment. This naturally led on to the question of impact assessment. The Commission needed to know what were the factors leading to rules that were unsatisfactory in market terms so that it could improve the rule-making cycle. Adopted rules also had to be evaluated. There should be a focus on problem areas before market dramas occurred.

Lastly the Chairman referred to the international angle of our work. European rules could have an impact on our near or more distant neighbours while we might suffer from foreign rules, for example US rules on insurance and reinsurance. Regulatory dialogue was therefore a necessary and direct response to globalisation and new developments and should concentrate on what was really important.

One Member State took the floor to support the Commission. Better enforcement was essential and the insurance intermediation Directive could usefully be mentioned in that context. In the insurance area the coming period would be that of Solvency II.

5. Solvency II

The Commission introduced the Solvency II point, which was the principal subject matter of this meeting of the Committee. The project was entering a crucial phase, which would see the preparation of the Framework Directive proposal and the delivery of CEIOPS' answers to the different waves of calls for advice. The Committee was called on to discuss a number of issues, both as regards organisation as well as technical and political issues; these were a roadmap for the preparation of the Framework Directive, possible changes to the Framework for Consultation, the drafts for the third wave of calls for advice, and a first draft of a document concerning the outline of the future Framework Directive. The Commission had prepared notes on each of these four issues. The first three had already been discussed at the meeting of the IC Solvency Subcommittee held on 3 March 2005.

Agenda item 5.2: the policy issues for Solvency II and the possible amendments to the Framework for Consultation (document MARKT/2505/05)

The Committee started its discussions with agenda item 5.2.

The Commission introduced this point by highlighting the importance of this subject for the work of CEIOPS, which requested the Commission to give more guidance. CEIOPS in particular would then be able to do its work in a more efficient way.

Concerning the objective of supervision, members agreed that protection of policyholders was important, although one member took the view that this was a different issue in reinsurance (business to business). Other objectives mentioned included: the beneficiaries in case of life insurance, just and stable markets, the furthering of the internal market. Another member emphasised that the main aim remained the protection of the policyholder, but this might have wider implications. One member emphasised the need for compatibility with Basel, in order not to create distortions of competition. Therefore, deviations from Basel should be justified.

On the purpose of Solvency II several members commented that it should encourage innovation in the industry, enable economic reform, provide opportunities to cover new risks and improve the global competitive edge of EU companies; they wanted these objectives to be specifically referred to in the Framework for Consultation. However, it should not seek to increase the overall level of capital, but rather aim at a more risk-oriented consideration of regulatory capital.

Several members pointed out that the Minimum Capital Requirement (MCR) should be an absolute minimum, below which the licence of the undertaking should be withdrawn and the undertaking removed from the market. One member took the view that if the MCR were not calculated in a risk-oriented way, this could disturb the working of the whole solvency system. It advocated amending paragraph 18 in order to give the possibility of introducing a risk-oriented MCR.

It was pointed out by several members that the process for validating an internal model should not lead to marked differences in the assessment by supervisors. This issue was linked to groups, as internal models will be used primarily by groups, which necessitated strong cooperation between supervisors. One member requested some clarification as to the cases in which the supervisor could or should require an internal model. This member, supported by others, also took the view that the concept of adequate distribution of capital in the group should be reinforced. It was emphasised that solo supervision should remain the responsibility and task of the national supervisor.

Several members requested a better justification concerning the choice for the confidence levels (75% for technical provisions; 99.5% for the Solvency Capital Requirement), although it was recognised that these percentages reflected a working hypothesis. One member suggested to also look at this in the light of experience gained by other sectors (banking) and rating agencies. Two members took the view that 75% for technical provisions was too low. Another member preferred not to use figures, but to describe the objective: technical provisions should be calculated on a fair value basis. It also believed that the choice for VaR could be better made by CEIOPS.

Supervisory and public reporting should be aligned to avoid administrative burdens, according to one member. It was pointed out by several members that in particular small(er) undertakings were generally not obliged to follow IASB accounting rules. These undertakings could be considerably affected by a general requirement to use IASB rules for supervisory reporting. One member also pointed out that the social function these small undertakings may have, should not be lost sight of.

A number of members pointed out that although reinsurance undertakings were targeted by Solvency II, not much attention was paid to the specificities of these undertakings either in the Framework for Consultation or in the Calls for Advice. The risk profile of reinsurers was fundamentally different from that of direct insurers. Another member took the view that it was still too early to make such a difference.

CEIOPS was pleased with the limitation of the options inherent in the Framework for Consultation. On the Quantitative Impact Studies (QIS) it informed the Committee that a first draft of the answer to the second wave of Calls for Advice (including the one on QIS) was expected to become available after the June meeting of the CEIOPS members. Currently, a preparatory field study was being undertaken, which of course was less detailed.

According to one member, the aim of Solvency II should not be to attain maximum harmonisation; minimum harmonisation with good supervisory cooperation would also achieve the objectives. The Chair agreed that the concept of maximum harmonisation indeed did not reflect the intention of the Commission: appropriate harmonisation was the agreed language. It also represented a more dynamic concept. One member pointed out that consumer protection and fair competition were important elements in the harmonisation context and therefore supported the objective of maximum harmonisation.

The Chair concluded that considerable improvement had been achieved and that a constructive discussion had been held, providing the Commission and CEIOPS with valuable input. The draft amended Framework for Consultation would now be redrafted to take account of the discussion and a new version would be presented at the June meeting of the EIOPC.

Agenda item 5.1: the Solvency II Roadmap (document MARKT/2501/05)

The Commission staff briefly presented the roadmap towards the preparation of the Solvency II Framework Directive(s). Member States broadly supported the approach and time planning contained in the Commission paper, and several Member States highlighted the need for close follow-up and project management in the future.

The Commission staff informed the Committee that the roadmap would be updated as often as was deemed necessary during the project.

Several Member States emphasised the importance of impact assessments during the course of the project. The Commission staff shared this view and explained the difference and similarities between the "impact assessment" that should take place at an early stage in the process and the more detailed "quantitative impact studies" (along the lines of the Basel II work) which would be performed when more details concerning the future solvency model were known.

Agenda item 5.3: the third wave of calls for advice from CEIOPS (document MARKT/2506/05)

The third wave of calls for advice was endorsed by the IC with a few minor changes. The final text would be sent formally to CEIOPS as soon as possible.

One member requested a Call for Advice on supervisory independence. It believed that advice by CEIOPS could provide valuable input into the discussion in the IC.

CEIOPS' Chairman supported this viewpoint. CEIOPS regretted that the call for advice on "independence and accountability of supervisory activities" had been withdrawn. The CEIOPS Chairman announced that CEIOPS would still reply to the call for advice as it had been drafted in an earlier paper.

The Commission stressed that the subject was considered as very important and that the framework directive would make a clear reference to this need for independence. However, when the call was presented to the IC Solvency Subcommittee on 3 March 2005, all except one Member State had asked for this call to be withdrawn.

Agenda item 5.4: outline of the Framework Directive (document MARKT/2507/05)

The Commission underlined that the main purpose of this discussion was to receive delegates' views on the possible legislative approach and initial reactions to the draft outline directive presented in the Commission document. In-depth discussions on the draft outline directive would follow at the next meeting of the Sub-committee.

Possible legislative approach:

In the working paper the Commission presented three legislative options. During the meeting two legislative approaches for the Solvency II framework Directives were discussed in detail.

The Commission Services' proposal (third option) was to draft and present simultaneously three (or four) different proposals on Solvency II. This would mean one Directive amending and recasting (where necessary) the Life Assurance Directive and one Directive amending and recasting the Non-Life Directives. In addition, a third Directive amending other relevant Directives (e.g. the Insurance Groups Directive) would be necessary. As far as Reinsurance was concerned, it would need to be considered whether the necessary changes to the Reinsurance Directive would take the form of an amending Directive or whether a recast would be more appropriate.

Instead of the three legislative approaches as presented by the Commission, one delegation proposed a fourth legislative option. It suggested that the Commission should start from a blank sheet of paper with the aim of codifying and revising the existing directives (life, non-life, reinsurance group etc) in one single directive, the perceived advantages being better regulation, legal certainty and easier application. The proposal was, with some modifications, supported by nine other delegations. Some Member States referred to a '3.5-approach' and it was unclear from the discussions whether all Member States interpreted option four in the same way as the delegation that was proposing it. The Commission recorded its reservations as this approach would lead to possibly time-consuming re-negotiation of the existing directives. One delegation advocated a step-by-step approach saying that first of all the necessary changes to the existing directives in the light of Solvency II should be discussed and in a second stage a codification could follow.

The Commission agreed to reconsider the legislative approaches for the next Subcommittee. It stressed that there were also disadvantages associated with the fourth option: combining all current directives into one legal text would make the negotiations of the Solvency II related changes to the insurance acquis more difficult and more lengthy and rewriting the insurance acquis might lead to the re-opening of negotiations regarding articles that would not be affected by the new Solvency II regime. Moreover, as Member States' current legislation was based on the current acquis, changes to the established structures might make implementation and transposition of Solvency II more difficult. Furthermore, the Commission stressed that the comparison made by some Member States with the banking sector and the Capital Requirements Directive (CRD) was not directly relevant, given that, in the banking sector, there was only one Directive, covering all credit institutions. In insurance, there might be good reasons for having different directives on life assurance, non-life insurance and reinsurance.

Initial reactions on the Draft outline directive

One delegation asked for a justification to be given every time there was a deviation from the CRD. It also called for the insertion of an article clarifying that the final responsibility for sufficient solvency lay with the undertaking (along the lines of Article 123 CRD).

Another delegation stressed that the three pillar structure should be reflected in a future directive.

6. Amendment of the 1980 Rome Convention on the law applicable to contractual obligations (document MARKT/2508/05)

The Commission introduced its document which reported that the Directorate-General for Freedom, Security and Justice (DG JLS) had begun work on the possible conversion of the 1980 Rome Convention on the law applicable to contractual obligations into a Community instrument (regulation or directive) and on the updating of its content.

Most insurance contracts were currently excluded from the Rome Convention and the rules determining the applicable law were laid down in the various insurance directives.

One of the possibilities being considered by DG JLS in its work (which was still at a very early stage) was to bring insurance contracts fully within the updated instrument to replace the Rome Convention. A very preliminary draft text was presented at a working party meeting held in February 2005 but did not represent an official position of the Commission services. If the approach involving the incorporation of the insurance rules in a new Community instrument were to be confirmed this would have major implications for the insurance Directives and the existing applicable law provisions of the insurance Directives would logically have to be repealed in order to avoid duplication of legal regimes.

For the Commission representatives it was crucially important that the insurance supervisors should establish contact and remain in touch with their Justice or Interior Ministry colleagues in order to make sure that important insurance aspects should be adequately taken into consideration.

One delegation reminded the Committee of past efforts to harmonise insurance contract law, which though extending over many years had ultimately proved fruitless. This was a highly complex and sensitive area.

7. Any other business

7.1 Pension funds

The Chairman stated that a number of issues had been raised by Member States and accordingly the meeting on questions of implementation scheduled for 19 April 2005 was confirmed. He also made reference to the protocol being drawn up by CEIOPS which was currently out for consultation.

The CEIOPS representative confirmed that a draft agreement between the supervisors was currently out for comment. Even though this was a matter of self-regulation for the supervisors CEIOPS had nevertheless sought input. The aim was to have the agreement, which was a basic level three type of measure, ready for the first application of the Directive in September. Any problems encountered could be discussed at the 19 April meeting. A similar project was in hand for the Insurance Intermediation Directive.

7.2 Insurance Intermediation

The Chairman reminded Delegates that the deadline for the transposition of this Directive was 15 January 2005.

To date eleven Member States had completed the process of implementation and had notified their national measures to the Commission. He urged Member States to notify the Commission in accordance with the proper procedures when they implemented the Directive as the launching of infringement procedures was now virtually automatic. Accordingly infringement procedures had been launched on 22 March 2005 against the 14 other Member States which had not yet implemented.

The Chairman called attention to the difficult situation created by the asymmetric transposition of the Directive, with resulting difficulties for the proper functioning of the single passport regime.

7.3 Motor insurance

The Commission reminded members of the Committee of the questionnaire on the insurance of trailers which had been launched as a result of the raising of this issue by the European Parliament in the negotiations on the Fifth Motor Insurance Directive. The Commission had requested replies by 2 May 2005.

7.4 Presentation by DG Enlargement of the TAIEX expert database

An official from the Enlargement DG presented the work of TAIEX - the Technical Assistance and Information Exchange Unit. Its aim was to provide the New Member States, Candidate Countries and the administrations of the Western Balkans with short-term technical assistance in the field of approximation, application and enforcement of EU legislation. It also organised peer reviews, whereby experts from the EU Member States' administrations were sent to candidate countries to assess the state of play of those countries' administrative capacity in certain fields. Information could be found on the TAIEX website: <http://taiox.cec.eu.int/>.

TAIEX maintained a database of experts that it could contact in case of need in an identified area of expertise. The Internal Market was one of TAIEX's main fields of activity. The conditions (remuneration, etc.) for being a TAIEX expert could be found on the following website: <http://taiox.cec.eu.int/ExpertDatabase/conditions>.

Any insurance expert who was interested was invited to visit the TAIEX expert database website (<http://taiox.cec.eu.int/ExpertDatabase/>), where all the steps for registration were well explained.

8. Newsletter

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

Publication of IC Papers

No further business being raised the Chairman noted the agreement of Members for the release all IC Papers and closed the meeting, the first meeting of the EIOPC being scheduled for 29 June 2005.