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**Draft decision points and conclusions  
of the 36<sup>th</sup> meeting of the Insurance Committee**

*Brussels, 1<sup>st</sup> December 2004*

## **Opening and welcome**

The meeting was opened and chaired by Mr Karel van Hulle, Head of the Insurance Unit of the Internal Market DG. Mr Schaub, Director-General, was unable to attend, his presence being required in Coreper, while Mr Thébault, Director, had left the DG to join the Cabinet of President Barroso.

The Chairman welcomed new and old members to what was likely to be the last meeting of the Insurance Committee before it was replaced by the European Insurance and Occupational Pensions Committee.

### **1. Agenda**

The agenda for the meeting was adopted without comment.

### **2. Minutes of the 35<sup>th</sup> meeting**

The revised minutes of the 35<sup>th</sup> meeting, incorporating one requested amendment, were adopted.

### **3. The Committee's 2005 Work Programme**

Introducing the draft Work Programme, the Chairman stressed that Solvency II would be the Committee's main item of work in 2005. The need for impact assessment meant that it would not be possible formally to table a proposal in 2005 though a draft proposal would be prepared by the end of the year. The Commission would table a roadmap with timelines for the Committee's spring meeting. The Committee would have a monitoring role, with the Solvency Sub-committee being used as necessary for technical discussion. The Commission was aware of the pressure on limited resources and would restrict meetings to what was strictly necessary. The Chair announced that 2006 was also the target date for any proposal on insurance guarantee schemes. The Chairman referred to agenda item 4 (problems on the US brokerage market), which the Committee might wish to add to the work programme.

All delegations which took the floor stressed the importance, scale and ambition of the Solvency II project, the complexity of which even exceeded that of Basel II in the banking field. There was a real need for strong project planning and management and the proposal to present a roadmap and timetable was welcomed. Levels 2 and 3 of the Lamfalussy structure should complement one another and not overlap. The Committee should focus on decisions and manage the process, giving directions to CEIOPS and it was therefore necessary to have the necessary information in advance of Committee meetings.

The 2005 work programme was approved.

In response to concerns expressed by several delegations, the Commission agreed to review the proposed dates for Committee meetings in 2005.

#### **4. Insurance brokers in the USA – recent developments and possible implications for the EU**

Introducing this point the Chairman noted that there were two aspects to the current situation in the US, namely hidden payments to brokers and alleged market rigging. The latter, if encountered in the EU, would be a matter for the Competition Directorate-General.

There was general agreement that developments in the US had to be followed closely. A number of delegations were very interested in a discussion on the practice regarding contingent commissions in other Member States.

Certain delegations warned against any over-hasty reaction in the EU and it was pointed out that the Community directive on insurance mediation, which was due to be transposed by 15 January 2005, provided certain safeguards in the form of enhanced information to policyholders.

Certain Member States were still discussing internally the issue of payments to intermediaries by both insurance buyers and insurance sellers. Enhanced transparency was a possible solution.

One delegation stated clearly that the remuneration of intermediaries by insurers had long been common practice in Europe and any attempt to ban payments from insurers would have very serious implications for the survival of many intermediaries. Another delegation pointed out the domination of the US market by a small number of very big brokerage groups, while competition in the EU was greater.

It was noted that CEIOPS had set up a working group on insurance intermediation, which would be holding its first meeting on 2 December 2004. Although its first task was to draw up a protocol of co-operation between supervisory authorities, it could later conduct work on the conditions of remuneration for intermediaries. It was agreed that CEIOPS would lead the work in this area.

The Commission noted with regret that at least 15 Member States would miss the deadline for implementation of the insurance mediation directive. The resulting asymmetric situation of implementation was most undesirable and could give rise to problems. The Commission would be rigorous in its application of the infringement procedures.

#### **5. Cross-border mergers and acquisitions**

The Chairman recalled that the ECOFIN Council in September 2004 had discussed obstacles to mergers and acquisitions in the EU banking sector. Following the conclusions of the ECOFIN the Commission would be examining the possible obstacles to cross-border consolidation across all financial sectors and would report back to the ECOFIN in 2005.

The Commission document before the Committee invited it to consider a series of questions and proposed that the question of qualifying holdings be included in Call for Advice No 16 to be addressed to CEIOPS.

There was general agreement that the questions posed by the Commission were the right ones and that the advice of CEIOPS, representing the supervisors who were faced with the practical application of the provisions on qualifying holdings, should be sought.

A number of delegations spoke in favour of seeking a common understanding of the relevant provisions and of exploring how the criteria were applied in practice, both across the Member States in the insurance sector and more widely on a cross-sectoral basis. The same level of technical skills should be sought even if the precise content of those skills differed from one sector to another. A number of Member States with unified supervision referred to the logic of this work in their particular case, while one Member State with separate supervision could accept the need for parallel application but felt that its supervisory regime could cope quite adequately.

One Member State felt that this work was less urgent in the insurance area than in the banking sector, while another warned against concentrating too much on the matter of qualifying holdings when the key factor in cases of insolvency was the quality of management.

Another Member State believed that there were possible institutional conflicts of interest (role in promoting the financial sector, competition role) which were of a political nature, and should be considered by the Commission.

Summing up, the Chairman noted that Members agreed there was a parallel with the banking sector and that the only criteria to be taken into account should be of a supervisory nature. The link with Solvency II (qualitative assessment) meant that CEIOPS could make a useful contribution on this matter as well.

One Member State commented on the very large amount of work that CEIOPS was being asked to undertake and wondered whether CEIOPS could cope with such a workload.

In response the CEIOPS representative noted that Solvency II was an overall project and that there was therefore a tendency to include everything in the project and thus in the calls for advice. CEIOPS could live with this. Its response to the calls for advice would not be final but rather would constitute technical input to help the Commission to draft the framework directive. CEIOPS might need to come back on its advice, adding a detail or even changing certain positions. CEIOPS' response on mergers and acquisitions would form part of the whole. No final answer could be provided for October 2005; CEIOPS would aim to provide an input of broad principles which would form the basis for further analysis.

One delegation asked the Commission for its views and intentions on timing, given possible parallel work in the banking and insurance sectors.

The Chairman responded that, although the framework was different, an effort would be made to keep the work running in parallel. However, unlike the insurance sector (Solvency II), the work in the banking area was not part of a broader legislative project. A more comprehensive cross-sector review of obstacles to cross-border integration would be presented to the informal ECOFIN in September 2005. This could possibly act as a catalyst for adjustments to similar provisions in the various items of sectoral legislation.

## **6. Solvency I**

The Chairman introduced the Commission's proposed methodology for the annual review of certain amounts fixed in the Solvency I Directives to avoid an erosion of the real value of the amounts.

Under these Directives, the absolute amount of the minimum guarantee funds (currently 2 and 3 million Euro) and the premium (50 million Euro) and claims (35 million Euro) thresholds for non-life business had to be reviewed annually. These amounts were to be increased where the consumer price index increase exceeded 5% since the last adaptation. The Commission paper proposed a methodology for the conduct of the review and a standard approach for its implementation by Member States.

Under the proposed methodology the reference period should be twelve months ending on 20 March each year and the relevant index would be the "European index of consumer prices". The result of the analysis should be communicated to Member States at the last meeting of the Committee each year. Member States would then have until the end of the following year to implement any required changes resulting from the analysis.

The Commission's calculation showed that in the light of the movement in the consumer price index between March 2002 and March 2004 no adjustment in the Solvency I amounts was currently required. The next review would be carried out in the autumn of 2005 and seemed likely to lead to an increase in the minimum guarantee and the premium/claims thresholds. Any changes would then have to be implemented by 1 January 2007.

One delegation asked on what basis a second indexation would take place.

The Commission responded that a second indexation would take as its starting point the amount from the last year in which the thresholds had effectively been raised.

A number of Member States, while agreeing to the proposed methodology, wondered whether the whole process could not be simplified. It was asked whether it could not simply be left in the hands of the Commission, even though it was noted that the current directives provided no regulatory powers in this area. Other Member States asked for a more official adoption of the new proposed methodology.

The Chairman suggested that the adoption of the new methodology should be noted in the minutes. He also suggested that the minutes should note the conclusion that there was no need for changes to the Directive amounts at this time.

Accordingly, the Committee formally approved the new methodology and agreed that no changes in the amounts were required at this time.

## **7. Accounting**

The Commission updated the Committee on the IAS 39 carve-out solution and on the endorsement by the Accounting Regulatory Committee on 30 November 2004 of IFRS 4 for mandatory use in the EU as from 1 January 2005. One material change introduced by IFRS 4 concerned the treatment of equalisation reserves, which could no longer be considered as provisions. In its paper, the Commission had made use of the work of the CEIOPS accounting subgroup, which was currently out for consultation. The Commission had concluded in its working document that there was no need for change to the Insurance Accounts Directive but that a clarification was necessary in the prudential Directives. The relevant changes, which in the case of reinsurance and non-life insurance, could be introduced via the reinsurance proposal currently under discussion, were suggested in the Commission note and the Committee was invited to comment.

The CEIOPS representative stated that the application of IFRS was a big challenge. The prudential rules were based in part on the accounting rules. In order to maintain the same level of prudence each jurisdiction had to take care of this issue during the provisional period pending Solvency II.

One Member State confirmed that the changed treatment of equalisation reserves was indeed a substantial change, while another delegation commented on the possible tax implications of this change.

Two delegations commented on a possible need to amend the Life Directive as well, although this need would only be felt in certain Member States.

The approach advocated by the Commission in its paper received general approval.

One delegation wondered what would happen in the meantime given that the Reinsurance Directive was not yet adopted or implemented.

The Commission suggested the interim period could be kept to a minimum and that the changes to the Third Non-life Directive to be introduced by the Reinsurance Directive could be given immediate effect.

Summing up, the Chairman noted the approval of the Committee to the approach advocated by the Commission. It was a question of making the minimum necessary changes on a provisional basis pending the finalisation of the Phase II insurance work of the IASB.

## **8. Financial Services Action Plan follow-up**

The Commission representative updated the Committee on the ongoing consultation exercise following the reports of the four expert groups and the June 2004 conference. Some 70 responses had been received, though the Commission was concerned at a relative lack of consumer input.

A preliminary analysis of the input pointed to the following conclusions: there was support for the single capital market but it was too early to say whether the FSAP was working in practice. Much depended on implementation and enforcement. Member States wanted a breathing space and action should only be taken where there was clear added value. There was no need for a new action plan. However, certain legislative priorities remained, such as reinsurance and Solvency II. There was clear support for improved consultation and preparation of legislation. The Commission could agree to better impact assessment that allowed sufficient time, but impact assessment should also be applied to the amendments introduced by the co-legislators. There was reticence about any centralised supervisory structure and most favoured an optimum use of the Lamfalussy structure. In the insurance sector, CEIOPS clearly had a crucial role. There was no agreement on the addition of a 26<sup>th</sup> regime, with questions raised about the cost and the practical implications of such a regime. Co-operation between supervisors was very important.

The Commission would produce and publish a synthesis of the contributions towards the end of 2004 or early in 2005 and around May 2005 would produce a green paper to outline its future strategy.

## **9. Solvency II**

The Chairman stated that the aim was to agree and formally send to CEIOPS the second wave of Calls for Advice (Nos 7 to 18). These concerned mainly Pillar 1 issues. The Chairman made a number of introductory points on the calls for advice.

In accordance with the Framework for Consultation, the specific Calls for Advice called for the technical provisions in life and non-life insurance to be calculated in a harmonised and transparent way that was IASB compatible.

The solvency capital requirement had to take into account the risk profile of each insurance company.

Quantitative impact studies were a very important and challenging area of work and several rounds of simulations would be needed. CEIOPS was being asked to help plan and then execute this exercise in order to give the Commission services necessary background material for the Extended Impact Assessment.

Peer reviews of insurance supervisors were clearly a controversial issue. CEIOPS was being asked to carry out preparatory work and analysis for the Committee. This issue would be re-discussed in the Committee.

Important group and cross-sectoral issues were addressed in a specific Call for Advice in this second wave.

Before moving on to each specific call for advice, the Committee first held a general discussion on the project and the first wave of calls for advice.

One Member State called on the Commission to ensure that the solutions found for Solvency II should wherever appropriate be as close as possible as those selected in the Basel II directive. This would help to avoid regulatory arbitrage.

The CEIOPS representative commented on the first progress report that had just been circulated in response to the first wave of Calls for Advice. It was more an activity report than a presentation of tentative conclusions. The aim was to give the Commission technical input for the drafting of the framework directive and CEIOPS was committed to meeting the June 2005 deadline. Before then it had to reach preliminary conclusions and put them out for public consultation. In addition all the CEIOPS subgroup chairs had been instructed to seek further input and a consultative panel would also be used. The task was challenging but the challenge could be met.

For one delegation this further underlined the need for strong project management and prioritisation. Some substantial content would be required very soon if the Committee was to be in a position to examine the CEIOPS report in June. The Committee should see the promised roadmap as soon as possible in the new year.

The CEIOPS representative understood this concern but was confident that CEIOPS could respect the timetable. It was necessary, however, to give the supervisors time to work and agree on highly complex issues.

CEIOPS' role under the Lamfalussy model was to provide technical advice. However all of the levels had to participate actively. The support of the Members of the Committee (at the level 2 political level) was needed.

The CEIOPS representative did not hide that there were certain organisational problems and the CEIOPS budget for 2005 still had to be approved. A solution was being sought but there were still problems with one Member State.

Two Member States requested that the problem of the CEIOPS budget and the need quickly to find a solution should be specifically noted in the minutes.

The Chairman agreed to this request and voiced the Commission's serious concern at this state of affairs. He stressed that it was essential for CEIOPS to have the political support of the Member States as well as practical support as regards the availability of people with the necessary skills.

At the request of the Chairman all Members of the Committee expressed their agreement for giving CEIOPS all the support it needed in order to fulfil its mandate.

Returning to the specific agenda item, a number of delegations cited calls for advice which in their view were of a priority nature. Nos 8, 10, 11 and 13 were mentioned in particular.

Two delegations had prepared a joint paper and requested its circulation.

The Chairman pointed out that the roadmap would be the structure of the framework directive. CEIOPS had to be allowed sufficient time to develop its thinking.

The CEIOPS representative agreed and reminded the Committee that the aim of the three waves of calls for advice was to help prepare the framework. The CEIOPS work would continue thereafter in greater depth.

Since a number of delegations had made specific reference to Call for Advice No 13 (quantitative impact assessment), CEIOPS noted that a working group (Financial Stability Working Group) was already active on this subject and more detail would be provided in the next progress report. However clearer ideas on Pillar 1 would be needed before this work could be taken much further.

One delegation noted that Call for Advice No 7 also presupposed political decisions such as calculation on a contract-by-contract or aggregate basis.

Another delegation thought that it was necessary to retain as far as possible the mathematical principles of the directives. However, profit sharing was not a priority. It was noted, however, that it remained to be seen what would be forthcoming in Phase 2 of IFRS 4.

One delegation noted that Call for Advice No 8 made only a brief reference to SMEs and was of the opinion that this issue needed to be considered in depth from the very start.

The Commission noted that there would be a specific call for advice on this matter in the third wave. While it was clear that there was a trend towards greater complexity, an effort should be made not to overburden small insurance companies.

With reference to Call for Advice No 18, one delegation stressed that group supervision was an essential feature of Solvency II that should be dealt with throughout the process and not just at the end.

Summing up, the Chairman noted the approval of the Committee to the second wave of calls for advice. A formal letter would be sent to CEIOPS as soon as possible. The Chairman noted and promised to respond to the call for prioritisation. The Commission would start very soon on drafting the third wave of calls for advice. This work would be finished in February 2005 and a written procedure for their approval would be used. This third and final (and smaller) wave of calls for advice would include, inter alia, pro-cyclicality, SMEs and eligible capital.

## **10. Any Other Business**

Brief oral presentations were made in respect of the Insurance Mediation and Pension Funds Directives.

Two meetings had been held to help Member States with the implementation of the Insurance Mediation Directive. A total of 99 questions had been discussed. Member States had been very satisfied with this initiative of the Commission, which provided useful guidance with a view to the implementation of the Directive into national legislation. These meetings had clarified a number of doubts on the scope of the provisions of the Insurance Mediation Directive.

On the Pension Funds Directive a meeting had been held in October 2004. The report on that meeting would be sent out as soon as possible and another meeting would be held if Member States considered this necessary.

One Member State already called for a second meeting.

The CEIOPS representative noted that a pensions working group was working on a protocol between supervisors for the implementation of the Directive.

Also under other business, one delegation wondered whether the Commission, having lost the bonus-malus case, intended to pursue the case on deductibles.

### **Publication of IC Papers**

Finally, Members agreed to release all IC Papers.