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**Draft Minutes of the 5th meeting of the
European Insurance and Occupational Pensions Committee**

Brussels, 29 November 2006

Opening and welcome

The meeting was opened and chaired by Mr Karel Van Hulle, Head of the Insurance and Pensions Unit in the Internal Market and Services Directorate-General.

The Commission reported certain departures from the Insurance and Pensions Unit. Ms Dejmek was moving to the Commission's Legal Service while Ms Rosenbaum was returning to Germany to take up new duties. The Chairman paid tribute to their excellent work on various dossiers and in particular on the Solvency II codification.

1. Agenda

The draft agenda was adopted without comment.

2. Minutes of the 4th meeting of the EIOPC

No requests for changes to, or comments on, the draft minutes were raised and the minutes of the 4th meeting of the EIOPC were adopted.

3. Solvency I

The Commission presented the results of the latest annual review of the minimum guarantee fund (life and non-life) and the premium and claims indices (non-life) required under Article 1(5) of Directive 2002/12/EC and Article 1(3) of Directive 2002/13/EC.

The review had been conducted in accordance with the methodology proposed and agreed at the 36th meeting of the Insurance Committee held on 1 December 2004. The review indicated that the increase in the consumer price index since the last adaptation did not exceed 5%. As a result, no new adaptation of the minimum guarantee fund or the premium and claims index figures was required. The Commission's conclusions were accepted by the Member States.

With respect to the increases that had been agreed at the 2nd meeting of the EIOPC held on 2 December 2005, the Commission reported that it had informed the Council and Parliament of these adaptations and had published a notice in the Official Journal. The Commission asked the Member States to notify it in writing that the necessary adaptations had been carried out before the agreed deadline of 1 January 2007.

The Commission suggested that it would be worthwhile, in the context of the Solvency II work and depending on whether any Euro amounts were laid down in the new legislation, to reconsider whether the current arrangements for automatic adaptation were the most appropriate.

4. Solvency II

4(a) General update on the Solvency II project

The Commission reported on its efforts since the previous EIOPC meeting. A number of meetings had been held with Member States, inter alia on group issues and the recast of the insurance directives. Work had also progressed on the recitals of the recast directive and a major exercise would have to be carried out to cross check all references. A document on minimum capital requirements had been discussed with Member States. Work also continued on the impact assessment and the Commission thanked the CEA for its input on the impact on products and markets. The ECB was providing input on the macroeconomic aspects and DG ECFIN and CEIOPS were also contributing. The Commission had started a series of

interviews with individual insurance undertakings, which were proving very interesting, and had participated in a number of conferences in various Member States. Further meetings with Member States were planned for 20 and 21 December, 29 and 30 January 2007, 22 and 23 February and 26 and 27 March. The Commission would have to finalise the drafting work on the framework directive at the end of March, which was already very late in terms of the anticipated adoption of the proposal by the Commission in mid-July and its immediate transmission to the Council and Parliament.

Two Member States praised the Commission for its work and good contacts with the industry. The question was raised about stepping up the frequency of meetings and mention was made of a possible extra EIOPC meeting devoted to Solvency II in the first quarter of 2007. The Commission promised it would do its best but noted that it was difficult to increase the pace of meetings given the necessary preparatory work.

CEIOPS reported on its ongoing work following its responses to the three waves of advice. It would provide a first set of additional advice in early December. At its last members meeting (end October) it had discussed the results of QIS2 (to be dealt with in a separate agenda item) and would issue a public report in early December. In the light of the QIS2 results it had issued further draft advice covering all three pillars. These included a major paper on key Pillar 1 issues, including technical provisions and capital requirements. This advice was open for comment until 12 January and a public hearing was scheduled for 10 January. Some issues were resolved by consensus, others had been put to a vote. On other issues it had not been possible to find a common CEIOPS position. In such cases the options were explained, setting out the pros and cons and the support they enjoyed. CEIOPS referred in particular to the common position on the calculation of technical provisions, which represented a milestone and a great achievement. This was a qualified majority position and care had been taken to explain the position of the minority. In March 2007 CEIOPS expected to deliver final advice on the above issues. There would probably be additional consultation papers plus the preparation of QIS3 (to run from April to June 2007). CEIOPS expected to come back on MCR/SCR calibration and planned a consultation paper in October 2007 with final advice in Spring 2008. A first report on the impact on supervisory authorities was in written consultation and the final report would be sent to the Commission in December.

The Commission thanked CEIOPS again for its efforts.

4(b) Choice of a risk measure for supervisory purposes: possible amendments to the framework for consultation

The Commission presented the cover note it had prepared, as well as the two background documents annexed to this note (CEIOPS letter and CEA working document). Three amendments to the current Framework for Consultation were under consideration by the Commission with respect to: firstly, the definition of ruin, to make this definition more comprehensive; secondly, the risk measure (VaR vs. TailVaR); finally, the possibility to allow for the use of alternative risk measures where an insurance or reinsurance company developed an internal model (flexibility principle).

After this introduction, the Chair invited the Members of the Committee to express their views on these three issues.

A vast majority of Member States expressed their preference for the new definition of ruin suggested by CEIOPS, because it better reflected the financial standing of an insurance or reinsurance company (in particular by taking account of "other liabilities", which sometimes took precedence over insurance claims in the case of winding-up). Three Member States suggested that the definition of ruin should however refer to "eligible assets", rather than "assets".

Two Member States opposed the proposed new definition of ruin, as the new solvency regime should strictly focus on policyholders' protection and should not aim at protecting other creditors.

Regarding the choice of a risk measure, the opinions of Member States appeared to be split: a number of Member States underlined the theoretical merits of TailVaR, while an equal number of them explained they preferred to use VaR, since it seemed to be more suitable in practice (in particular, for SMEs). Some Members said they were indifferent or had not made any decision yet. Almost all Members of the Committee pointed out that such a risk measure should appropriately capture large exposures (e.g. natural catastrophes) while being computable by all companies, which obviously made the choice between VaR and TailVaR very difficult.

Most Member States supported the introduction of a flexibility principle for companies using an internal model. One Member State opposed the proposed amendment to the extent it hampered the harmonisation of standards and practices throughout the Community.

The Chair concluded that the Commission would soon circulate a draft Amended Framework for Consultation, in order to change the definition of ruin (and adopt the CEIOPS proposal) and include the flexibility principle. Regarding the risk measure, it needed to further consider this issue, taking full account of practical concerns

4(c) Presentation by CEIOPS and discussion of the results of QIS 2

A CEIOPS representative provided an advance presentation of the QIS2 report. He noted that QIS1 had been focussed on technical provisions, while QIS2 had a much broader scope but did not involve a final calibration. The emphasis on methodology and the multiple options had led to complexity and many complaints. For provisions, for example, they had tested both the percentile and the cost of capital approaches. 514 companies from 23 countries took part (at least in part). The main results were that QIS2 did not suggest big problems with capitalisation. Most undertakings met the virtual requirements though the impact on small companies was bigger than on the larger ones. For most companies, MCR was less than 75% of SCR, but because of profit-sharing (in SCR and not in MCR) for some companies the MCR exceeded the SCR. In extreme cases MCR actually exceeded SCR. Industry showed a slight preference for the cost of capital approach but for those that did both calculations the difference was very small as compared with the 75th percentile. For most companies the solvency ration remained above 100%. QIS2 also provided information on which risks were most important: for life firms it was market risk, for non-life underwriting risk and for composites a mix of the two.

Other comments received called for no charge for concentration risk in the standard formula, suggested that group diversification was not sufficiently addressed and were against the Basel approach to credit risk. The equity risk charge was felt to be prohibitive in some cases. The module for underwriting risk in life assurance did not take account of volatility suggesting in this case that the calibration was too low. There was criticism of the operational risk part of the standard formula.

The conclusion was that it was necessary to rethink certain risk modules and that the calibration for all modules would have to be looked at again. For QIS3 it would be possible to put in parameters that could be defended empirically. A lesson for QIS3 was that there was a danger of losing support if the size of QIS3 was similar to number 2. Therefore decisions had to be taken. A single QIS3 was expected without options. An even greater participation of small firms was needed.

The Commission thanked CEIOPS for this presentation and all their hard work and invited Member States' comments.

One Member State regretted that this was the first time that the Level 2 Committee was looking at the formula that was at the heart of Solvency II. Several Member States referred to the equity holdings where the charge was the same whether insurers' investment horizon was one month or 30 years. There was concern too at the effect on smaller companies and it was necessary to keep markets open and competitive. For some the k factor was a source of problems.

One Member State referred to the MCR/SCR relationship, which was wrong for many firms. It was necessary to bear in mind what the MCR was for, i.e. as the point at which firms should go into run-off.

On the equity risk charge CEIOPS accepted that 40% was on the high side but felt that any figure lower than 35% could not be justified empirically. 99.5% over one year gave 35-40%. It was recognised that equity was unduly punished because of the correlation structure but it was harder to say that the 40% scenario was way out of line.

Concern was raised concerning the paper presented by two Member States on group issues.

The Chairman of CEIOPS raised the question of amending the Framework for Consultation (FfC). Two previous amendments were felt in CEIOPS to be good Lamfalussy practice in that they reflected common progress and an evolving learning curve. However, the new paper on group supervision was very different and was an attempt to shift the learning curve and was not a natural outcome of the internal process. The CEIOPS Chairman did not comment on the merits of the proposal, which had not been discussed in CEIOPS. Rather he raised procedural concerns and feared that such a radical change could prevent CEIOPS from finalising its advice in what was an already tight timetable.

Certain Member States voiced their opposition to the group supervision paper and feared its practical effects. Others felt that there was insufficient time now to consider all of its ramifications. It was noted that the directive could be amended in the future.

Other delegations supported the ideas in the paper and felt that the proposal could not simply be ignored or that procedural considerations should determine the process.

The CEIOPS Chairman noted that if the FfC was not amended, CEIOPS would continue to follow it as it currently stood.

5. SEPA (Single European Payments Area)

A Commission representative briefed the Committee on the Payment Services Directive proposal (PSD) and the Single European Payments Area (SEPA).

The Directive on Payment Services was intended to provide the legal foundation for the creation of an EU-wide single market for payments. The PSD aimed at establishing a modern and comprehensive set of rules applicable to all payment services in the European Union. The target was to make cross-border payments as easy, efficient and secure as 'national' payments within a Member State. The PSD also sought to improve competition by opening up payment markets to new entrants, thus fostering greater efficiency and cost-reduction. At the same time the Directive provided the necessary legal platform for the SEPA.

The SEPA was an initiative of the European banking industry that would make all electronic payments across the euro area – e.g. by credit card, debit card, bank transfer or direct debit – as easy as domestic payments within one country were now. The proposed PSD was intended to provide the necessary legal framework for SEPA, as well as for better payments in all EU countries.

On a practical level, SEPA meant that the European citizen would be able to make fast and secure transfers between bank accounts anywhere in the euro area, while if shopping abroad he or she would be able to use a bank debit card to make a payment in euro, just like at home.

SEPA would also help to improve all payments, whether they were domestic payments or cross-border payments between two euro area countries. All consumers would benefit from new rules ensuring transparent pricing and prompt transfer.

Banks would be able to make the first SEPA products available starting 1 January 2008, and were aiming to make SEPA a reality for everyone by the end of 2010.

More information was available on the Europa website at:
http://ec.europa.eu/internal_market/payments/index_en.htm

6. Revision of Article 15 of Directive 2002/83/EC and the corresponding articles in the other insurance directives

The Services provided the Committee with a brief update on the on-going work to revise the supervisory approval process for acquisitions and increase of shareholdings in the banking, securities and insurance sectors.

A proposal for a Directive amending the Capital Requirements Directive, the Life, Non-life and Reinsurance Directives and the Market for Financial Instruments Directive (MiFiD) had been adopted on 12 September 2006. The Commission proposal foresaw a streamlined assessment procedure of 30 working days and a list of five clear prudential criteria on the basis of which the competent authorities would be allowed to oppose a proposed acquisition or increase of holding.

The Commission proposal and a number of subsequent compromise proposals prepared by the Finnish presidency had been discussed in the Council during October and November 2006. As far as the European Parliament was concerned, the Rapporteur, Mr. Klinz, had published his report. The intention of the institutions was to adopt the Directive in one single reading. The work would continue during the German Presidency in the new year.

7. The charging of fees by the host Member State for branch supervision

This matter had been raised in CEIOPS by a Member State considering whether to charge a fee and seeking to ascertain other States' practice. CEIOPS had sent out a questionnaire, the results of which showed no consistency in practice. Some Member States imposed a fee, while others did not.

The Commission apologised to CEIOPS for using their survey results without their permission and recognised that the survey might not be complete or up-to-date. The Commission noted that the directives were silent on the subject of charging for branch supervision but felt that it was quite legitimate for the Level 2 Committee to consider and discuss this matter. It was noted that while the main supervisory role lay with the home State, the host State also had a role as regards conduct of business and to make sure that the general good rules it imposed were respected.

During the discussion, various Member States described the basis on which they charged for branch supervision. Some noted that charging a fee was quite legitimate provided it did not constitute an obstacle. Others stated that they did not charge a fee or had stopped doing so. A number of Member States stated they would be open to seeking a harmonised approach in this area.

It also emerged during the discussion that some Member States also charged fee in respect of inward freedom of services business.

In conclusion, the Commission felt that it would be a good idea to send out a questionnaire to obtain full details of Member State practice in respect of the charging of supervisory fees for both branch and freedom of services business. It might also be a good idea to obtain basic information on the financing of supervision in general.

8. Insurance Mediation

Introducing this point, the Commission noted that all the Member States but one had now implemented the Directive. The missing Member State was expected to comply soon. The Commission noted that checking transposition was difficult if no transposition table was provided.

The Commission then presented its suggested approach towards a definition of when an insurance intermediary was operating under the freedom to provide services (FOS). The Commission was not seeking a final solution at this meeting, further discussions with the Legal Service being needed. The FOS concept was not defined in the Insurance Mediation Directive (the IMD). This contrasted with the situation in other Insurance Directives where there was such a definition. This was a practical problem as insurance intermediaries would not know whether they were operating under FOS and thus were obliged to notify their intention to carry on business in other Member States to their competent authorities (and comply with the general good rules of the host Member State). The Commission was already receiving many enquiries concerning this issue. The Commission suggested as a practical approach to follow the definition contained in the Life Assurance Directive, whereby an

intermediary would be considered to operate under FOS if the MS in which he was established was different from the Member State where the recipient of his services (i.e. the policyholder/customer) was established.

The Chairman of the CEIOPS Insurance Intermediaries Working Group took the floor first and explained the problems which the Working Group faced: the competent authorities for the IMD were sometimes different from those that supervised insurance undertakings. He also mentioned a further problem in that the IMD was based on the Insurance Directives even though it was fundamentally different as it concentrated more on the provision of services. He concluded that the Working Group would have another round of discussions on the FOS issue and would provide an analysis of this problem. He stated that the Commission's proposal was one of many and that it might in the final analysis be necessary to take a completely different approach not even based on the Insurance Directives.

Members of the Committee expressed their appreciation of the Commission's work on this difficult issue but in principle did not agree with the suggested approach. Most of the Member States followed the approach of the Insurance Directives (location of the risk and commitment). They considered that the Commission's suggestion was an over-simplistic approach to a very complex problem that needed to be looked into in greater detail. It was suggested that an examination be made of other pieces of legislation, namely the e-commerce Directive or Distance Marketing Directive.

Another issue discussed was the existence of excesses/deductibles in professional indemnity insurance (PII) contracts. The Commission was mainly interested to know whether steps were taken in the Member States to ensure that they could not be invoked against the customer of the intermediary. Most of the MS confirmed this to be the case. One delegation commented that the issue might not be so problematic but that another issue, namely the list of exclusions under PII contracts could be looked into. Member States agreed with the Commission's opinion that excesses might be allowed provided that the aggrieved party was fully indemnified.

The final issue discussed under this agenda item was the non-implementation or incorrect implementation by several Member States of Article 3 of the IMD which obliged the competent authorities of the Member States to remove from the register intermediaries who no longer fulfilled the requirements of the Directive. The Member States agreed that this obligation had to be expressly implemented in their national laws. One Member State informed the Committee that the necessary change in their legislation had already been made, another expressed its willingness to change its legislation to implement this provision. The Commission concluded that unless all Member States implemented this provision, it would have to consider starting infringement proceedings.

9. Motor insurance – Accession of Bulgaria and Romania to the EU

The Commission brought to the attention of the EIOPC the latest developments in respect of the participation of Bulgaria and Romania in the EU Motor Insurance System.

Firstly it was stressed that the Commission in its Monitoring Report of 29 September 2006 on the preparedness of Bulgaria and Romania for EU Membership had noted positive developments in the motor insurance sector of both countries. In this context, the Commission reminded Member States of the considerable efforts made in recent years in assisting Bulgaria and Romania to comply on time and before accession with the requirements set for their membership of the Council of Bureaux Multilateral Agreement as well as the CEA Agreement between Compensation Bodies and Guarantee Funds before accession, notably to

reduce the number of uninsured vehicles and to improve the financial position of their Guarantee Funds.

The Commission also informed Member States of the Council of Bureaux (COB) positive recommendation to their members in respect of the signing of the Multilateral Agreement with Bulgaria and Romania, adopted on 13 November 2006 by the COB Management Committee. Furthermore, the message received from the COB that the national insurers' bureaux of two Member States were not willing for various reasons to follow the COB Management Committee recommendation was transmitted to Member States. As far as the Agreement between Compensation Bodies and Guarantee Funds was concerned, the decision on signature with Bulgaria and Romania had not yet been taken by the signatories and the CEA would keep the Commission informed. However, since there was a strong linkage between the two agreements and often the signatories of these agreements were the same bodies, it was unlikely that the CEA Agreement would be signed before the signature of the COB Multilateral Agreement.

The Commission presented the main consequences of the failure to sign the two aforementioned agreements. First of all, Member States would be allowed to maintain checks on motor third party liability insurance in respect of vehicles normally based in Bulgaria and Romania as well as in respect of third country vehicles entering their territory from Bulgaria and Romania (and vice-versa) after 1 January 2007. Furthermore, the mechanism foreseen by the 4th Motor Insurance directive to improve victims' protection in cross-border situations would apply only partially – the system of compensation bodies would not be activated. This would happen despite the fulfilment by both countries of the criteria set for their membership of the agreements.

The Chairman then invited the COB representatives to present their views on the issue. A detailed presentation was made stressing the progress made by the two acceding countries in order to meet the required criteria. It was also pointed out that in view of the concerns raised by some bureaux about the number of Bulgarian and Romanian vehicles circulating abroad with expired plates, a specific clause had been inserted in Addendum No 3 to the Multilateral Agreement. The meaning of the clause was that the Bulgarian and Romanian bureaux would respectively guarantee for 5 years after the entry into force of the Agreement the compensation of victims of accidents caused by Bulgarian or Romanian vehicles bearing expired plates in another country belonging to the Multilateral Agreement.

The Chairman concluded that it was important to make the EU motor insurance legal framework applicable to all Member States. He therefore offered further assistance of the Commission Services to the parties concerned in order to ensure the full participation of the two acceding countries in the system.

10. New comitology arrangements

The Commission reported on the new comitology procedure, namely the regulatory procedure with scrutiny introduced by Council Decision 2006/512/EC amending Council Decision 1999/468/EC. A consolidated version of the Decision had been published in Official Journal C 255/4 of 21.10.2006.

The role of the EIOPC was not affected and its competences were not touched. However, the EIOPC would in due course be called on to play a major role in the comitology area under Solvency II.

The new Decision maintained the old regulatory procedure under which the European Parliament had limited control rights over comitology measures but added the new scrutiny procedure under which the Parliament would now have a substantial role to check whether the Commission had not acted ultra vires and had respected the permitted scope for comitology measures and the principles of subsidiarity and proportionality.

DG Markt already had substantial experience of Lamfalussy comitology, notably in the securities sector, and had tried to facilitate matters by trying to take account of Parliament and Member State concerns already in the comitology procedure before any vote.

In return for the greater powers under the new procedure Parliament had agreed to remove the sunset clauses whereby implementing powers in certain directives lapsed after a specified time.

A number of priority legislative acts were being adapted to introduce the new procedure (four in the insurance field).

11. Proposal for a regulation on the law applicable to contractual obligations (Rome I) – possible extension of scope to include insurance contracts

The Commission provided information about the ongoing discussions in the Council and the European Parliament concerning the inclusion of insurance contract law in the scope of the future "Rome I"-regulation.

One delegation emphasised the need for an impact assessment, if amendments proposed in the course of this legislative procedure were to bring about a substantial change in the current regime for the applicable law for insurance contracts.

The Commission services emphasised once again the need for the Member States' Ministries of Finance to closely coordinate their positions on the desirable scope of "Rome I" with their counterparts in the Ministries of Justice, given the fast development of this dossier. The Commission also promised to keep the EIOPC informed on ongoing developments.

12. Any other business

Motor Insurance

The Commission reminded Member States to deliver by the end of 2006 their figures on the level of uninsured vehicles in accordance with the method agreed at the EIOPC meeting of 6 July 2006: ratio of insured vehicles to registered vehicles.

Furthermore, Member States were informed about the state of play of the Commission Report on Article 4(6) of the 4th Motor Insurance Directive 2000/26/EC and on legal expenses as well as about the work to produce a Motor Insurance Leaflet for Citizens.

Newsletter

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

No further business being raised, the Chairman closed the meeting, the next meeting of the EIOPC being scheduled for 4 April 2007.