



Ares 34079
December 2008

**Minutes of the 10th meeting of the
European Insurance and Occupational Pensions Committee**

Brussels, 27 June 2008

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 of the European Commission.

1. Agenda

The Commission Services stated their wish to add a point on retail investment products under any other business. No other request was raised and the agenda was adopted.

2. Minutes of the 8th meeting of the EIOPC held on 29 November 2007

The CEIOPS representative requested certain changes to the minutes text relating to agenda item 5(i) concerning Solvency II – Discussion on Level 2 impact assessment work for Solvency II implementing measures.

The text as amended at CEIOPS' request would read as follows (changes underlined):

"CEIOPS expressed broad support for the proposed approach and generally agreed to contribute to the impact assessment, making clear that the EC is the responsible body for the IA. The CEIOPS FSC WG, where the European Commission participated as an observer, would coordinate other WGs' work as far as impact assessment was concerned. A clear mandate was needed.

On the specific list of policy issues proposed for analysis as part of the level 2 impact assessment (B Annexes) there was some discussion and suggestions; to summarize them, CEIOPS is willing to cooperate with the EC in this area of work providing inputs to the EC, but at the same time made clear that its contribution would focus on the qualitative part of the work, policies and options, whilst its contribution to any quantitative assessment would be provided based upon QIS exercises.

On the further analysis to be conducted by different stakeholders on specific areas (C Annexes), Member States generally supported the issues proposed.

On health insurance analysis, as well as on any other specific area of work included in C Annexes, CEIOPS expressed reservations about its proposed contribution, underlying the need for other contributors (e.g. consultants) in this area, as CEIOPS will not take direct part in this type of work, due to prioritization of work streams and resources available."

No objection being raised, the minutes of the 8th meeting, as amended, were adopted.

3. Occupational pensions issues

3(a) The CEIOPS report on the implementation of the IORP Directive

The Commission Services presented the essential content and main conclusions of the report, as well as the proposed way forward (*cf.* Explanatory note MARKT/2512/08).

In the subsequent discussion, one delegation explicitly agreed with the conclusions of the report, notably with the recommendation not to seek premature legislative changes to Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision ('IORP Directive'), given the limited experience Member States have had

with it since it was implemented. However, the same delegation made the point that legislative changes might be necessary at some future point in time, should it be found that level 3-guidance on certain issues would not be sufficient.

Another delegation, taking the opposite position, expressed the view that they would rather have more harmonisation by means of a legislative revision of the IORP Directive.

The Chairman concluded that Member States broadly agreed with the report and also took note of the fact that the vast majority of Member States agreed with the report's recommendation not to envisage a legislative revision of the Directive at this stage. He suggested that the report be made available on the European Commission's website.

3(b) The CEIOPS report on the solvency aspects of IORPs and the draft consultation paper

The Chairman introduced the European Commission's draft "Consultative document for the consultation on the harmonisation of solvency rules applicable to institutions for occupational retirement provision (IORPs) covered by Article 17 of the IORP Directive and IORPs operating on a cross-border basis" dated 23 June 2008 which was circulated to the EIOPC on 24 June 2008 (*cf.* MARKT/2514/08).

The Chairman emphasised that in order to have a consultation that really delivered clear answers, it was important to distinguish between different types of IORPs. Accordingly, the consultation first of all concentrated on those IORPs that were covered by Article 17 of the IORP Directive: these IORPs underwrote their own liabilities/provided guarantees and were therefore required to have regulatory own funds, i.e. additional assets above the technical provisions to serve as a buffer. For these regulatory own funds, Article 17(2) of the IORP Directive referred to the Solvency I regime under Directive 2002/83/EC concerning life assurance ('Life Assurance Directive'). As the latter Directive would cease to exist with the adoption of the Solvency II Directive, the question arose whether and to what extent this regime should be replaced by solvency rules similar or equivalent to the Solvency II rules. In addition, the consultative document also dealt in its Chapter 4 with those IORPs that engaged in cross-border business. The IORPs envisaged could be IORPs covered by Article 17 of IORP Directive as well as other IORPs. The extension of the scope of the draft consultation document was justified by the fact that the European Commission wanted to see to what extent the differences in the solvency regimes for IORPs that operated on a cross-border basis were creating internal market problems.

A number of Member States fully supported the draft Consultative document presented by the Commission Services and most of the other Member States did not raise any concerns. Some Member States emphasised particularly that the consultation was largely driven by the Solvency II question and that it should not lead to a wider debate.

Two Member States suggested that the consultation should be extended to cover all IORPs, including the IORPs that operated only on a domestic basis. It was underlined that, while financing arrangements may be different, insurance companies could offer comparable pension products with the same guarantees to the consumer. If IORPs that were not subject to Article 17 of the IORP Directive were excluded from the consultation this might potentially give rise to an unlevel playing field issue. Moreover, it was also suggested that the rules for cross-border and domestic IORPs should be similar within the single market.

It was clarified, however, that the consultation would address cases where such IORPs competed with insurance undertakings on a cross-border basis. Further, it was also noted that IORPs are not always in competition with insurance companies (although it is not true for many IORPs) where they exist solely to provide a mechanism for an employer to defer remuneration into the post retirement period for its own employees only, not to provide pensions services generally in the market. Some Member States then expressed the view that if the consultation were to cover all IORPs, including those that operated only domestically, the consultation should also cover domestic arrangements falling outside the IORP Directive, in particular pay-as-you-go and book reserve systems.

While a few Member States expressed concern that the focus of the European Commission proposal would limit the consultation to IORPs in only a very few Member States, some delegates suggested that the cross-border perspective potentially covered all IORPs. In the meeting it was also mentioned that potentially every IORP operated on a cross-border basis.

Some delegates also pointed out that the objective of the consultation should be made clear from the very start. If the consultation gave rise to an expectation that a Solvency II type regime would be introduced for IORPs, there was a risk that the industry and employers would expect a significant rise in the cost of occupational pension provision.

Other representatives suggested that if Solvency I applied to IORPs then it would be logical that Solvency II should also apply to IORPs. The Chairman, however, reminded the meeting that Solvency II was much more sophisticated and that the innovations (e.g. 99.5% VaR over one year) would not necessarily be appropriate or proportionate for IORPs.

A number of Member States also asked for a clarification on how the link between the IORP Directive and the current Solvency II Directive Proposal would be broken. The Commission Services confirmed that the aim was clearly to maintain the *status quo*, i.e. keep Solvency I applicable for IORPs covered by Article 17 of the Directive. However, the amendment proposed by Mr Skinner, MEP in his report, i.e. keep the reference in the IORP Directive to the Solvency I provisions in the Consolidated Life Directive was not possible from a legal perspective and an alternative approach, i.e. an amendment of the IORP Directive to include the wording of the Solvency I provisions in the Consolidated Life Directive was currently being discussed with the Secretariat of the European Parliament.

The Chairman concluded the discussion by asking Member States for written suggestions on the draft consultative document by 4 July 2008, as it was intended that the consultation should be launched as soon as possible.

4. Solvency II

4(a) Update on QIS4

The Commission Services provided an update on the fourth Quantitative Impact Study ('QIS4'). QIS4 preliminary results would be presented by CEIOPS in Parliament's ECON Committee in mid-September 2008, and final results would be published on 19 November 2008.

CEIOPS provided an update on work done in QIS4, the level of participation in the exercise, and future work.

4(b) Update on Impact Assessment work on level 2 implementing measures

The Commission Services gave an update on the Impact Assessment work for Solvency II implementing measures. A seminar would be held at the Commission's premises at the end of July 2008 between CEIOPS and Commission representatives involved in the Solvency II level 2 Impact Assessment. A call for tender would be launched in autumn 2008 for a study on specific areas for the C annexes of the Impact Assessment report.

CEIOPS made some general comments about steps already taken and its future contribution to the level 2 Impact Assessment work.

One Member State made some comments and suggestions on the CEIOPS paper on policy issues and options. The Commission Services invited written comments on this paper by July 14th.

A follow up on the Impact Assessment work for level 2 measures would be provided at the November 2008 EIOPC meeting.

5. Insurance Mediation Directive

5(a) Update by CEIOPS of recent IMD work and current initiatives

The Commission Services introduced this point by informing Members of the EIOPC of its current initiatives concerning Directive 2002/92/EC on insurance mediation ('IMD'), in particular its intention to conduct a thorough implementation check of the Directive with an input from the EIOPC. This exercise would focus on checking the application of those provisions of the IMD which were of fundamental importance for the functioning of the European market for insurance intermediaries because they involved a cross-border element.

The Chairman then requested Mr Victor Rod, Chairman of the newly established Committee for Consumer Protection of CEIOPS, to give a short presentation from the CEIOPS perspective on the IMD. Mr. Rod informed the EIOPC members of the conclusions of the former Intermediaries Expert Group of CEIOPS (IMEG), which could be summarized as follows:

1. No amendments to the IMD needed at this stage;
2. Adoption of 3 amendments (references) to the Luxembourg Protocol concerning the inclusion of competent authorities for registration of insurance intermediaries, mutual recognition and out-of-court handling of consumer complaints;
3. Integration of the freedom of services ('FOS') definition in the revised Luxembourg Protocol at the request of the Commission. According to this definition (adopted by the IMEG and presented to the EIOPC already at its meeting in November 2007), an insurance intermediary was operating under FOS if such intermediary intended to supply a policyholder, who was established in a Member State different from the one where the insurance intermediary was established, with an insurance contract relating to a risk situated in a Member State different from the Member State where the insurance intermediary was established.
4. Identification of three areas as likely elements of a future review of the IMD (i.e. the scope, fit and proper requirements and the professional indemnity insurance cover);

5(b) Report by the European Commission on the adaptation of certain Euro amounts laid down in the Directive

On the basis of changes in the European Index of Consumer Prices in the period from 15 January 2003 to 15 January 2008 the amounts referred to in Article 4(7) of the IMD concerning the professional indemnity insurance cover and the financial capacity of an insurance intermediary were increased by 12.02 percent. By virtue of Article 4(7) first subparagraph of the IMD, these changes were applicable from 15 January 2008.

6. European Commission consultation on possible amendments to the Commission Decisions establishing the Level 3 Committees

The Commission Services informed the EIOPC Members of a public consultation on the role of the three European committees of national supervisors in the sectors of insurance (CEIOPS), credit institutions (CEBS) and transferable securities (CESR). The consultation commenced on 23 May 2008 and was to end on 18 July 2008. It was intended to lead to a greater coherence between the decisions instituting these three committees.

The Commission Services believed that there was already a broad consensus, reflected in the ECOFIN conclusions of 14 May, that the responsibilities of the Committees of supervisors should be aligned, clarified and strengthened to ensure an enhanced contribution to supervisory cooperation and convergence at EU level.

In addition, the current financial turmoil had increased awareness of the need to strengthen EU financial stability arrangements and triggered a debate on whether, and if so how, the Committees should play a role to contribute to the safeguarding of financial stability.

7. Insurance Guarantee Schemes

The Commission Services informed the EIOPC Members of a public consultation on Insurance Guarantee Schemes. This was launched to provide stakeholders with the opportunity to comment on the main findings of the Report on 'Insurance Guarantee Schemes in the EU - Comparative analysis of existing schemes, analysis of problems and evaluation of options' by OXERA and to make known their views on the desirability and feasibility of Community action in this area. The consultation had commenced on 7 May 2008 and was open until 7 July 2008. As part of the public consultation, the European Commission had held a public hearing on 2 June 2008.

8. General good requirements and the financing of supervisory authorities

8(a) General good requirements

The Commission Services reminded the Committee that the issue of general good requirements was regularly referred to by the insurance industry as one of the major obstacles to further development of the internal market in insurance. This remained therefore a very important question for the Commission.

In November 2007 in the document on Retail Financial Services accompanying the Single Market Review the European Commission underlined the need to examine the national general good requirements currently in force in the Member States.

At the EIOPC November 2007 meeting, the Commission Services invited Member States to provide information on their general good requirements. Only 11 Member States had so far responded.

Accordingly, Members of the Committee were once again asked to notify the European Commission of their general good requirements. Links to web pages defining general good rules or information already sent to the CEIOPS Consumer Protection Committee would suffice. The Commission Services also encouraged those Member States which maintained that it was difficult to collect the requested information to explain why this was so.

8(b) Financing of supervisory authorities

This was another point first raised at the November 2007 meeting of the Committee. The Commission Services had received a limited number of replies to its questionnaire. The EIOPC Members were encouraged to notify the requested information if they had not already done so.

9. Motor insurance

The Commission Services reported on the second meeting of the motor insurance working group of the EIOPC which had been held on 23 June 2008.

It was pointed out that the technical character of the issues discussed had amply justified the decision to set up this specific technical sub-group of the EIOPC.

The issues examined at the June meeting included implementation of certain main provisions of the Fourth and Fifth Motor Insurance Directives (claims representatives, reasoned offer/reply procedure and related penalties, dispatched vehicles, victim compensation in case of accidents by exempt persons and vehicles, victim compensation in case of property damage caused by an unidentified vehicle, insurance cover of vulnerable parties (pedestrians and cyclists in particular), access of victims to police records) as well as the state of play of various files such as the codification of the Motor Directives, the Rome II study on the level of compensation for cross-border victims and the motor insurance market study proposed in the context of the Single Market Review.

10. Presentation on the work of FUEDI

Mr. Kieran Rigby, president of the FUEDI, the European Federation of Loss Adjusting Experts, gave a presentation to the EIOPC on the claims management profession in different Member States, the scope of their activities, market practices and challenges as well as on the role of FUEDI at the pan-European level. The Chairman asked the Members of EIOPC to think about the role of loss adjusting experts could play particularly in the context of natural catastrophes.

11. Finnish request for a discussion on insurance guarantees for emergency conditions

The Finnish request as regards insurance guarantees for emergency situations, where the main purpose was to provide an alternative to unavailable reinsurance, was explained and discussed. Member States with similar administrative solutions or legislative instruments in force were asked to inform the Commission Services and the Finnish delegation by 30 September 2008.

12. EU-US issues

12(a) Financial markets regulatory dialogue and Transatlantic Economic Council

The Commission Services reported on the most recent developments as far as EU-US insurance related matters were concerned.

The US side had shown that it was well aware of Solvency II. Recent issues discussed included equivalence criteria (federal or US State level), reinsurance collateral, the level playing field between US and EU based insurance and reinsurance undertakings and treatment of third country insurers and re-insurers as well as the Solvency II timetable.

The US Treasury had also informed the European Commission of its blue-print on regulatory reform. In the long-term perspective, the US wished to create an optional federal regulatory charter, i.e. insurers would be regulated on federal rather than State level. In the short-term, it was planned to create an office of insurance oversight within the US Treasury which would be responsible for international negotiations such as on collateral.

12(b) Holocaust era insurance claims (proposed US Legislation)

The Commission Services reported on the US Draft Bill requiring a disclosure of all insurance policies valid between 1933 and 1945 in Germany or any country or territory occupied, controlled, allied or sympathetic to Germany and creating a Federal and a State cause of action on this issue. This Bill was intended to void the 2003 ruling by the US Supreme Court on the inadmissibility of court cases against the undertakings participating in the International Commission on Holocaust Era Insurance Claims and the legal peace commitment of the US Administration for undertakings participating therein.

The Draft Bill merely reaffirmed current US Law. It included, however, an instruction to the Secretary of the Treasury to enter into negotiations with a number of EU Member States and also to use the US participation in the European Bank for Reconstruction and Development in this respect.

The Draft Bill was voted on 25 June 2008 by the House of Representatives Financial Services Committee. Before the final signature by the US President, it would have to be voted in other relevant Committees of the House and by the full House and also an identical text would have to be voted by the Senate. Some US Senators were calling for an international conference on restitution in 2009.

13. Any other business - Retail investment products

The Commission Services provided an update on the 'Call for Evidence on Substitute Investment Products.' The results of the Call for Evidence were published in March 2008 and an industry workshop took place in May 2008. An Open Hearing was scheduled for 15 July 2008. A Communication was planned for the end of 2008.

The project had in the meantime been refocused on what was now referred to as "Retail Investment Products." This was because the scope of the project had been streamlined. It focussed primarily on whether the current patchwork of rules governing product disclosures and intermediary regulation across different pieces of EU financial sector legislation gave rise

to potential investor risks. The Communication that was being prepared would cover investment funds, structured securities and unit-linked life assurance products.

As far as life assurance was concerned, the work carried out so far suggested that there could be a case for further investigation and possible corrective action in two specific areas.

1. There might be a risk that policyholders of unit-linked life assurance products did not receive, on a pre-contractual basis, sufficient information on costs and features of the underlying investments.

This concerned both the Life Assurance Directive and the IMD. As regards the Life Assurance Directive, Annex III already required that insurers provide an "indication of the nature of the underlying assets for unit-linked policies" before conclusion of the contract. But, pre-contractual disclosures in the Life Assurance Directive could probably be improved. For example, policyholders might not be sufficiently aware about the market risk they were exposed to when taking out unit-linked life assurance policies with little biometric risk cover. This was also of relevance for the IMD. Some stakeholders had suggested that it was the responsibility of the product manufacturer to supply pre-contractual information to the intermediary, and that it was the responsibility of the intermediary to transmit this information to the end policyholder.

2. Work carried out so far raised the question whether sufficiently rigorous rules were in place to guard against the risk of commission bias driving a wedge between the interests of investors and distributors of unit-linked life insurance products. This point concerned the IMD. While the IMD did not include remuneration disclosure rules, it required intermediaries to tell the customer whether they were giving advice based upon a fair analysis (using a sufficiently large number of insurance contracts), or whether they had contractual obligations with one or more insurers. Furthermore, Article 12.3 stipulated that "Prior to the conclusion of any specific contract, the insurance intermediary shall at least specify, in particular on the basis of information provided by the customer, the demands and the needs of that customer as well as the underlying reasons for any advice given to the customer on a given insurance product." Nonetheless, insurance rules predated those in the Directive 2004/39/EC on markets in financial instruments ('MiFID') and there might be some room for improvement. At the same time, it should be borne in mind that the scope of the MiFID and the IMD as well as their degrees of harmonisation were different.

The Commission Services had not yet formed any concrete opinion on whether these two issues for unit-linked life assurance products should be dealt with at EU level and, if so, how. But, what seemed very clear already was that any legislative proposal for EU action within the near future was highly unlikely. The IMD still needed time for its full effects to unfold and the Solvency II Directive proposal did not deal with consumer protection directly.

At this stage, the Commission Services continued to be in a thinking mode. In order to collect information on the national situation prevailing in Member States, the Chairman informed the Committee that the Commission Services intended to prepare a small questionnaire with a few targeted questions.

Next meeting

No further points being raised, the Chairman closed the meeting and announced that the next meeting of the Committee was scheduled for 26 November 2008.