



**MARKT/2502/08 - EN Orig.  
January 2008**

**Draft Minutes of the 8th meeting of the  
European Insurance and Occupational Pensions Committee**

*Brussels, 29 November 2007*

## **Opening and welcome**

The meeting was opened by Mr Jörgen Holmquist, Director-General of the Internal Market and Services Directorate-General of the European Commission. Addressing the EIOPC for the first time, Mr Holmquist referred to the important ongoing work on Solvency II and thanked all involved for their efforts. The dossier was progressing well but clearly much work remained to be done. He also mentioned a number of current dossiers, such as retail financial services and the review of the Lamfalussy process.

The meeting was chaired in the morning by Mr Karel Van Hulle, Head of the Insurance and Pensions Unit and in the afternoon session by Mr Alan Beverly of the same Unit.

### **1. Agenda**

The draft agenda as proposed by the Commission was adopted without amendment.

### **2. Minutes of the 7<sup>th</sup> meeting of the EIOPC held on 4 July 2007**

No requests for changes to, or comments on, the draft minutes were raised and the minutes of the 7th meeting of the EIOPC as tabled by the Commission were adopted.

### **3. DG Competition Final Sector Report into Business Insurance**

The representative of the Competition DG presented the main findings of the Commission's Sector Inquiry into Business Insurance.

Regarding co-insurance and re-insurance, DG Comp noted that "best terms and conditions" (BTC) clauses were now rarely found in contracts and their use may be limited to the negotiation process. This may be for a number of reasons but it was feared that if the Commission did not take a clear view on this there might be a renaissance of this practice, which would be detrimental to consumers.

In the subscription market it was found that premium alignment was very common. The fact that the customer might be driving the negotiations with insurers did not necessarily mean that there would be no infringement of Article 81.

The final report addressed distribution channels, conflicts of interest and commissions (and commission rebating). On commission rebating, the fact-finding carried out had revealed no firm evidence of recommendations being issued not to use commission rebating. There had been some challenging of the findings with regard to Italy on the question of exclusive distribution networks. The public consultation had revealed considerable interest in the 'net quoting' issue, but there were no conclusive results on whether this restricted choice.

Regarding conflicts of interest in intermediation, it was found that brokers might be subject to conflicts because remuneration was based on the level of premium and other services might also be provided to the insurer. There was much support for disclosure and transparency and some calls for the prohibition of 'contingent remuneration'. It had been suggested that, in at least some jurisdictions, SMEs considerably underestimated the amount of commission payable to intermediaries.

In the matter of the Block Exemption Regulation, a majority of respondents were in favour of extending the BER when it expired in 2010. Many arguments had been put forward but, in the view of DG Comp, the discussion of the BER should be set in the wider context of overall competition policy. DG Comp was in principle of the view that other norms of competition regulation provided sufficient certainty and there was therefore no need for a specific

instrument. The non-renewal of the BER would, in its view, have little if any effect on the antitrust status of the practices it covered.

As to the next steps on business insurance, there would be an intensive process of discussion with industry regarding BTC/premium alignment. It had to be considered what tools would be most appropriate to tackle concerns on brokerage conflicts of interest - competition tools, regulatory route? DG Markt and Comp would work together in the context of the review of the insurance mediation Directive. Long term contracts remained an issue in Austria.

The DG Markt representative asked what kind of advice DG Comp would give to the industry when it read this report.

Comp replied that undertakings should review their compliance. Were there efficiencies that justified any behaviour that otherwise might be deemed restrictive? Price alignment might constitute an infringement.

One delegation raised an issue in relation to the point on distribution and asked whether it was possible to see the breakdown for different Member States, for example regarding the conclusion about SMEs. It was replied that the interim report contained additional information, though the scope of that particular study was limited to the UK market.

Another delegation wondered why DG Comp was making the case for the removal of the BER. Was there evidence of detriment to businesses? How did Comp evaluate this evidence in view of the benefits?

DG Comp replied that the regulation would lapse at the date set and therefore the case needed to be made for its renewal and not its removal. Form-based exemptions were risky so, in line with its general policy, DG Comp wanted to move towards an effects-based approach. There was some, albeit limited evidence that certain provisions of the BER might exempt behaviour by undertakings which did have anti-competitive effects on the market – was this a price worth paying for legal certainty?

There was also no compelling evidence that the insurance industry in particular should be treated differently to other industries, which successfully cooperate on various issues similar to those covered by the BER and self-assess compliance with the competition rules.

The Chairman noted that DG Markt would be in close contact with DG Comp on this issue.

#### **4. Solvency I – annual examination of certain amounts laid down in the Directives**

##### **The Life and Non-Life Directives**

The Commission Representative presented the results of the 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.

In the absence of any dissenting voices the Chairman noted that the Committee had answered in the affirmative to the two questions that had been put to it and in particular agreed that no adaptation of the minimum guarantee fund, premium and claims index figures were required.

## **The Reinsurance Directive**

The Commission representative noted that the Reinsurance Directive also required an annual review of the amount of the minimum guarantee fund. The Directive stated that the reviews should start from 10 December 2007.

The Commission had therefore proposed a methodology for this review. The requirements for the annual review of the minimum guarantee fund in the Reinsurance Directive were similar to the requirements for the reviews under the life insurance and non-life Directives. The methodology proposed for reinsurance was therefore similar to that for life and non-life insurance.

The Reinsurance Directive required that the first review period should start on 10 December 2005. It was proposed that the first review period should run from December 2005 to December 2006. Thereafter the review period would always be from December to December.

It was also proposed that the annual review would always take place in the autumn following the end of the year of the review period. This would avoid the busy end of the year period and also allow sufficient time for the preparation of the data for the review period. The review for reinsurance would also then coincide with the review for life-insurance and non-life insurance.

The Commission services had carried out the first review for reinsurance using this proposed methodology. The increase in the consumer price index for the period from December 2005 to December 2006 was 2.16% which was below the 5% threshold and therefore no adaptation was required.

Two questions were put to the Committee. Did the Committee agree with the proposed methodology for reinsurance and did it agree that no adaptation to the amount of the minimum guarantee fund were required?

CEIOPS asked whether the review period for reinsurance could be the same as for life and non-life insurance. The Commission replied that this was not possible due to the wording of the Directives (they stipulated when the review periods should start).

One delegation asked whether the methodology meant that revised amounts would not have to be implemented by Member States until the end of the year after the year when the review took place. The Commission confirmed that this was indeed the case.

Another delegation pointed out that the minimum guarantee fund amounts were currently different for reinsurance and for life and non-life insurance (because the latter two had been increased), and asked whether these could be adapted through Article 56. The Commission replied that this was not possible because the different Directives stipulated different timescales. This would be looked at as part of Solvency II. The Commission also pointed out that the Directives stipulated minimum guarantee funds and Member States were free to raise these if they wished.

In the absence of any dissenting voices the Chairman noted that the Committee had answered in the affirmative to the two questions that had been put to it.

## 5. Solvency II

### (i) Discussion on Level 2 impact assessment work for Solvency II implementing measures

The Commission made a presentation on a proposed outline for the level 2 impact assessment work for Solvency II implementing measures (illustrating the note MARKT/2516/07), in order to obtain feedback and suggestions from Member States on this exercise.

Overall, Member States expressed a wide measure of support for the general approach adopted, and believed that the same problem definition and objectives as used for the level 1 impact assessment should be retained.

The main general issues raised were the following:

- proportionality: several Member States highlighted that the proportionality aspect must be properly taken into account into the impact assessment. The Commission representative made clear that the proportionality principle was indeed taken into account in the impact assessment within the analysis of each policy option, when assessing what the impact of the policy option would be on SMEs, and how much consistency was reached through each policy option. It emerged from the debate that it was advisable, for the level 2 impact assessment, to make a clear initial statement in the Commission's note, clarifying how the proportionality issue was dealt with in the impact assessment;
- quantitative analysis: the issue was raised that the analysis carried out for the level 1 impact assessment was mainly qualitative, and that more quantitative analysis was needed for the level 2 work. The Commission agreed, confirming that this was precisely one of the drivers of the level 2 exercise, as the level 1 impact assessment, which dealt with a principle based framework directive, could not sufficiently expand on quantitative analysis of more detailed issues. This would be dealt with at level 2;
- any possible deviation of the Commission from CEIOPS advice should be explicitly justified;
- work should start as soon as possible;
- industry should be involved as much as possible.

CEIOPS expressed support for the proposed approach and generally agreed to contribute to the impact assessment. The CEIOPS FSC WG, where the 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.

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, CEIOPS expressed some reservations about its proposed contribution, underlying the need for other contributors in this area.

## **(ii) Commission oral report on preparations or QIS 4**

The Commission representative first referred to the recent publication by CEIOPS of the QIS3 summary report on its website and thanked CEIOPS warmly for its good work in the QIS3 exercise. The level of participation in QIS3 had been remarkable, since more than 20% of EU companies had taken part in the exercise.

From the Commission's point of view, there were already three important lessons to be drawn from QIS3, so as to make QIS4 even more successful:

Firstly, the data submitted on groups were disappointing. It was necessary to see significant improvement in both the level of submission to CEIOPS' centralized data-base and the quality and completeness of data submitted in QIS4, so that the impact of the Level 2 measures could be properly assessed and tested.

Secondly, further work was needed on simplifications for SMEs for technical provisions and the calculation of the SCR in order to give SMEs a clear indication of what the proportionality principle meant in practice.

Thirdly, QIS3 also illustrated that further analysis and data needed to be collected under Solvency II regarding the use of partial and full internal models to calculate the SCR.

From a practical point of view, the QIS3 summary report contained a number of very helpful recommendations (e.g. more guidance, more user-friendly spread-sheets, and increased contact with the industry). The Commission would work closely with CEIOPS and stakeholders to try to put them into practice for QIS4.

Regarding the way forward on QIS4, the Commission, in its 19 July letter to CEIOPS on further work on Solvency II, had set out a revised Solvency II Roadmap; one of its sections was dedicated to QIS4. Basically, there were three phases: development of the draft QIS4 specifications, consultation on the draft QIS4 specifications, and running of the QIS4 exercise.

The Commission had asked CEIOPS to provide it with the QIS4 draft technical specifications by 20 December 2007; these should include simplifications for technical provisions and the calculation of the SCR as well as the use of entity specific parameters.

In contrast to the previous QIS exercises, the Commission was politically responsible for the consultation. It planned to publish the draft QIS4 specifications produced by CEIOPS on its website on 21 December 2007. The consultation would run from 21 December 2007 to 15 February 2008. People would have to connect to the website to comment on the draft QIS4 specifications. Work was in hand with DG MARKT's IT team to develop the website and structure the on-line consultation (by main issues, e.g. SCR, MCR, etc.). It was also intended to meet with the industry (i.e. CEA, AISAM – ACME) to ensure that the consultation and the QIS4 exercise ran as smoothly as possible.

Meanwhile, the Commission intended to organise three events to consult on the draft QIS4 specifications:

- There would be a Public Hearing on 28 January 2008 to discuss QIS4 technical specifications, where the Commission proposed to focus on 3 key topics: the proportionality principle and SMEs, groups and internal models.
- It was also proposed to have an extraordinary EIOPC meeting on 1 February 2008 to discuss QIS4 technical specifications with Member States.
- It was suggested to hold a meeting with Stakeholders on 11 February 2008 in order to examine detailed technical aspects.

Once the consultation was closed, the Commission would collate comments and classify them into political and technical issues. It would pass on the technical issues to CEIOPS, but would process the political comments from all stakeholders, including Ministries of Finance and Members of Parliament. With the help of CEIOPS, the draft QIS4 specifications would be updated accordingly, reflecting the consultation process.

It was planned to finalise the technical specifications towards the end of March, and issue a Call for Advice asking CEIOPS to run QIS4 between April and July 2008, and to publish the results in November 2008. In practice, there would thus not be any significant change as compared to QIS3 with respect to that phase: CEIOPS would develop the QIS4 spread-sheets over the first half of April (so-called "pre-test"), and afterwards supervisory authorities would assist the participants if they had questions on the QIS4 specifications (Q&A process); companies would have to return their results to supervisory authorities, as usual.

As could be seen, CEIOPS was very much involved in QIS4 and its invaluable help was greatly appreciated.

## **6. Reinsurance**

The Commission representative reported on the feedback received from Member States regarding the questionnaire sent to them before the meeting on implementation of the Reinsurance Directive (2005/68/EC) due to be transposed by 10 December 2007.

The Commission representative also introduced a draft paper on third country insurers and reinsurers dated 31 October 2007 setting out the treatment of third country reinsurers under existing legislation (including the Reinsurance Directive the implementation date for which was imminent) as well as under the Solvency II proposal.

The Commission representative indicated that the paper would be finalised taking into account comments received by Member States and other interested parties who had been invited to comment on the paper. The Commission said they had already received comments from some third country reinsurers and competent authorities of third country jurisdictions.

CEIOPS noted that they were planning to create an Equivalence sub-group to look at questions of equivalence and mutual recognition under Solvency II and the Reinsurance Directive.

## **7. Relations with the US and China**

The Chairman provided a short briefing on the recent meetings in Fort Lauderdale, Florida.

The meeting with China had involved CIRC, CEIOPS and the European Commission. China was very interested in consumer protection and life insurance and we should provide more information to China on our supervisory and regulatory practices. It was hoped that the next meeting would take place early in 2008, though the planning of these meetings was not easy.

The Europe – US meeting had involved the NAIC, CEIOPS and the European Commission Discussion had continued on reinsurance collateral requirement in the US. The NAIC proposal was a disappointment and was considered still to be discriminatory against third country reinsurers. Other issues addressed included the compact system in the US, the IAIS restructuring and the sub-prime crisis.

Work continues on a Memorandums of Understanding between supervisors. A new Memorandum of Understanding (MoU) was signed between Bafin and the Nebraska Department of Insurance. This is a difficult issue because it was necessary to deal with State

Insurance Commissioners (in the absence of any federal authority) and these changed very often.

The next meeting was scheduled to take place after the tri-annual meeting of IAIS in March 2008 (Basel).

## **8. Retail financial services**

### **(i) Report on the follow-up to the Green Paper and the public consultation**

The Commission representative reported on recent work in the area of retail financial services.

Following on from the Green Paper of 3 May 2007, the Commission had published a summary of the contributions it had received in response. The consultation had culminated in a Public Hearing held in Brussels on 19 September.

All of this work had contributed to the Single Market Review package, which had been published on 20 November.

Despite its considerable achievements, it was felt that the single market still had untapped potential and needed to adapt to new realities. Retail financial services represented an important part of the Commission's Single Market Review.

One of the documents accompanying the main review paper (A Single Market for 21<sup>st</sup> Century Europe), dealt specifically with Initiatives in the area of Retail Financial Services. Under the heading of "making retail financial markets work better", the document made specific reference to motor insurance, general good rules and fiscal representatives and the administration of premium taxes.

### **(ii) Certain issues affecting the retail insurance market**

#### **a. Availability of information on general good rules**

The Commission representative introduced the document and request for information concerning national general good requirements.

Such requirements were regularly referred to by the insurance industry as one of the obstacles to cross-border business.

Delegates were reminded of the Commission's 2000 Interpretative Communication which set out inter alia the strict conditions laid down by the Court of Justice which had to be met if general good requirements were to be deemed to be compatible with Community law.

The Commission had checked the various websites of the supervisory authorities. Some set out the general good requirements while others did not. The Commission was requesting Member States to give their assistance to the Commission in the execution of its proposal to draw up a full inventory of the general good conditions imposed by each Member State acting as the host Member State for branch or freedom of services business. Only when it had all this information could the Commission begin to assess whether such requirement met the Court's conditions.

The Commission requested that this information should be provided by 31 March 2008. This could be done by means of a precise reference to where on the relevant website these requirements were to be found or in documentary form.

A number of delegations referred to the very heavy workload this Commission request would entail and asked for more information on the scope of this exercise.

Others wondered whether the Commission already had a list of what it considered to be legitimate general good requirements and could produce such a list.

Certain other delegations appeared to see no problem in providing this information.

One delegation made the point that it was very difficult for the host State to apply the Court's test which involved checking whether the general good objective was not already safeguarded in the home State as this implied having knowledge of the applicable rules in 29 other countries.

Summing up, the Commission representative expressed surprise that some delegations found this request so burdensome, given that this information should already be provided to incoming insurers via the home State authority. The Commission maintained its request for this information but Member States should contact it if they would need more time.

#### **b. Supervisory fees – presentation of draft Commission questionnaire**

The Commission introduced its draft questionnaire. The question of supervisory fees had been discussed at the 5<sup>th</sup> meeting of the Committee and the idea of sending out a questionnaire to obtain comprehensive information on this matter had been raised at that meeting.

One delegation wondered whether the matter of supervisory funding was an issue to be considered at EU level given Member State competence in this area.

Another delegation suggested limiting the question to branch and freedom of services business.

In response, the Commission representative suggested that there was a Community interest if supervisory fees constituted an obstacle to cross-border business. He also noted that the 5<sup>th</sup> meeting had discussed looking at the whole picture, including the supervision of domestic business.

#### **c. Fiscal representatives – repercussions of the ruling of the Court of Justice in Case C-522/04**

The Commission asked Member States to study the Court of Justice ruling in the above case. The Court had ruled in that case that the requirement for the appointment of a fiscal representative was not justified given the availability of less restrictive measures.

A more detailed discussion of this issue could be scheduled at a future meeting of the Committee.

#### **d. Commission call for evidence on substitute investment products**

The Commission services presented the main elements of the Call for Evidence on 'substitute' retail investment products. The presentation highlighted that an increasingly wide range of products - including funds, unit-linked life insurance and structured notes - were available to retail investors but that the regulatory treatment of the different product types varied. This had provoked concerns in relation to the level of investor protection provided by different families of EU legislation. The ECOFIN Council had requested that the Commission investigate this issue. The Call for Evidence was the first step in a stock-taking exercise. The Commission retained an open mind on the existence of material risks to investors and the need for remedial action. Drawing on the evidence received from all stakeholders, the Commission would produce a Communication on the need for EU-level action in autumn 2008.

Several delegations expressed support for the initiative, while insisting that any intervention in this area should be accompanied by a thorough assessment of the costs of complying with additional requirements, which would ultimately be borne by consumers. Other delegations stressed the need for co-ordination with other Commission initiatives, for example the review of the Insurance Mediation Directive. Several delegations pointed to possible differences in the stringency of rules on becoming an intermediary in different sectors as a possible driver of producer choice, suggesting in particular that rules on insurance intermediation may be relatively weak. One delegation asked for 'commission bias' to be considered as another factor influencing the actions of distributors. One delegation flagged the work undertaken on this topic by the three Level 3 Committees.

The Commission reiterated that the purpose of the call for evidence was simply to take stock of the current situation and its attendant risks for retail investors. In light of the concerns expressed and of the request from ECOFIN, there was a clear *prima facie* case for examining these issues. However, there should be no presumption that the Commission would act in this area. Were a compelling case for EU level action to be made, any action would be conducted in accordance with the principles of better regulation, taking full account of the costs of any intervention for industry and consumers. Careful co-ordination would be needed with parallel work on related initiatives, such as the review of the Insurance Mediation Directive and the work of DG Competition.

#### **9. Motor insurance**

The Commission representative reported on the first meeting, on 27 November, of the motor insurance working group of the EIOPC.

There had been two main agenda items, namely uninsured driving and problems under the 5<sup>th</sup> (and other) motor directives.

On the first point, there had been a discussion of the two methods for calculating the scale of uninsured driving. The first involved calculating the ratio of the number of insured vehicles to the number of registered vehicles. This was the Commission's preferred method. The second method looked at the ratio of the number of accident claims involving uninsured vehicles to the total number of accident claims. This was the CEA's preferred method.

Many Member States had problems linked to out-of-date vehicle registration databases and it was therefore concluded that both methods were valid. At the same time the Commission called on Member States to see whether it was possible to clean up their registration database.

The Commission also called on any Member States which had not replied to the questionnaire to do so.

Concerning the 5<sup>th</sup> Directive, the meeting examined the state of play of transposition of the directive. The following problems were raised and discussed – the relationship between the Bureau and the Guarantee Fund, the "direct" right of action against the Guarantee Fund, problems resulting from the Directive's provision to facilitate vehicle importation and the right of the visited country to inspect the insurance of visiting EU motorists and to take action if no valid insurance was held.

One EIOPC delegation referred to this latter issue and was informed that the Commission's Legal Service had been consulted.

## **10. Any other business**

### **(i) CEIOPS report on the results of the CEIOPS work on certain interpretation issues in the Insurance Mediation Directive**

The Chairman of the CEIOPS Working Party on Insurance Mediation reported on the work undertaken in his Committee on the question of the definition of the cross-border provision of services in the intermediation field. The letter on this subject from the CEIOPS Chairman to Mr Holmquist had been circulated to members of the Committee.

There was no definition of services business in the Directive and intermediaries could be found to be acting under freedom of services without being aware of it.

Three possible solutions had been considered. The first looked at the residence of the policy-holder. This could lead to situations where the intermediary was not aware that he was acting on a cross-border basis and therefore had to follow the relevant general good provisions.

The second proposed solution was based on the situation of the risk and raised similar problems to those under the first solution above in that essentially local transactions may have cross-border elements artificially introduced into them.

The third proposal was a combined definition taking into account residence of policy-holder and situation of risk. The intention of the intermediary was also important. The intermediary had to be aware that he was engaged in the cross-border provision of services where the relevant provisions were to apply. This third proposal had been accepted by all Member States to be the viable approach and had been approved at the CEIOPS Members Meeting – but the question arose as to whether this decision was legally binding. It would be possible for this third proposal to be incorporated as a new provision in any amendment of the Directive.

The Chairman noted that the Commission's Legal Service would have to be consulted but hoped that there would be no problem provided the proposal did not run counter to any previous doctrine.

### **(ii) Update on the envisaged proposal for a directive on non-discrimination outside the labour market – points relevant for the insurance sector**

Representatives of the Commission's Directorate General for Employment and Social Affairs introduced their work in the area of non-discrimination.

Article 13 of the Treaty dealt with the subject of non-discrimination, but anti-discrimination rules in the areas of social security and access to services only applied at present to discrimination on the basis of race or sex.

In 2008 a new directive would be proposed to extend this protection to cover other types of discrimination. In its 2008 Annual Policy Strategy the Commission had announced its intention to: "propose new initiatives designed to prevent and combat discrimination outside the labour market – based on gender, religion, belief, disability, age or sexual orientation".

DG Empl was keen to communicate with Member States on this issue but so far there had not been much response.

The DG Markt representative noted that it had recently received a number of letters concerning alleged discrimination regarding access to insurance affecting people with disabilities or suffering from certain illnesses.

A number of delegations made remarks or raised questions regarding the equal treatment Directive (2004/113/EC) and the coming deadline of 21 December 2007 by which Member States had to decide whether or not they wished to avail themselves of the possibility offered by Article 5(2) of that Directive to continue to allow the use of gender to permit proportionate differences in insurance premiums.

**(iii) Problem raised by the International Credit Insurance and Surety Association (ICISA)**

The Commission representative informed the Committee of a problem raised by ICISA concerning the absence of a level playing field in a number of Member States between banks and insurance companies concerning the provision of sureties/guarantees in various fields (e.g. customs bonds, intervention board guarantees, performance bonds). In some Member States only banks were allowed to act as guarantors, while in others the decision appeared to be left to individual customs officers.

Since only certain Member States were concerned the Commission proposed to contact them individually regarding the problems raised by ICISA.

**(iv) Rome I**

The discussion of the status of the Rome I dossier was postponed to a future meeting of the Committee.

**(v) Responsibility for notification of winding-up decisions**

The Commission representative presented this point. In its Article 14 relating to publication of winding-up decisions, Directive 2001/17/EC stipulated that the national competent authority, the liquidator or any person appointed by the competent authority shall publish the decision to open winding-up proceedings.

The Commission invited each Member States to inform the Insurance Unit of who in their respective Member State was empowered to request the publication of winding-up decisions in the Official Journal of the European Communities.