



Ares 34049
June 2009

**Draft Minutes of the 11th meeting of the
European Insurance and Occupational Pensions Committee**

Brussels, 26 November 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 Chairman proposed the draft agenda for adoption. He noted that under any other business the Czech delegation had suggested a brief report on the forthcoming EU presidency of the Czech Republic. In addition, the Spanish delegation suggested to report on the Spanish register of life insurance contracts. Finally, the Chairman also proposed a new agenda item regarding the annual review of the minimum guarantee funds (life, non-life and reinsurance) and the premium and claims indices (non-life). With the adoption of these various points the agenda as amended was adopted.

2. Minutes of the 10th meeting of the EIOPC held on 26 June 2008.

Under item 2b of the Agenda, the members were informed of the amendments raised by the UK delegation as regards item 3b of the Draft Minutes of the 10th meeting of the European Insurance and Occupational Pensions Committee (*cf.* MARKT/2518/08). At the meeting, the French delegation suggested additional changes to the text submitted by the UK. The text as submitted by the French delegation was adopted as the final one.

Since no other requests for changes to, or comments on, the draft minutes were raised, the minutes of the 10th EIOPC meeting as tabled by the Commission were adopted.

Item 3b of the Minutes of the 10th meeting of the European Insurance and Occupational Pensions Committee reads as follows

'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.'

3. Financial Crisis and Commission's Course of Action.

a) Update by the European Commission on actions taken and/or envisaged; exchange of views.

The Commission representative presented a summary of actions taken and/or envisaged. The presentation is attached to the draft minutes (Annex 1).

Two Member States raised the question as to whether the Commission Services would undertake any steps to amend the Solvency 1 framework in order to introduce herein the hybrid capital. Member States pointed out that the hybrid capital had not been discussed during the Solvency 1 negotiations. It was also mentioned that the conclusions from the Solvency 2 can be made towards the Solvency 1 framework being one of the answers to the financial crisis.

The Chairman mentioned that the issue of hybrid capital and super-subordinated debt had been discussed extensively during the course of 2006. In 2006 it was concluded that the outcomes of the parallel discussions in the banking sector should be firstly considered.

The chairman, however, pointed out that the Commission Services would look into this matter once again and would report back."

b) CEIOPS Plenary decision: lessons to be learnt from current financial crisis for the future Solvency II regime.

CEIOPS informed about the recent analytical work undertaken and reports published (structured credit products and evaluation issue done by 3L3 Committees).

Market turbulences have had limited impacts on European insurance and pensions markets so far. The exposures to AIG and Lehman Brothers were relatively minimal. However, as important investors, insurers and pensions funds participate in general market developments and were impacted by indirect effects. It was pointed out that overreactions by the industry should be avoided. CEIOPS believes that robust risk management and internal control mechanisms are necessary tools.

As part of the monitoring tasks, CEIOPS aimed at the first quarter results of the nine main systemically relevant insurers. There has been an impact of the current situation, i.e. significant reduction in profit or even losses. It cannot be excluded that more entities will enter into losses by the end of 2008. The situation, however, remains under control since the insurers came with a strong position in the beginning of 2008 and solvency buffers have worked well and fulfil their function.

There are for the moment minor exceptions and the situation might deteriorate further as regards the entities under stress if the conditions do not improve. Also natural catastrophes will have an impact, mainly as regards the reinsurers (this will be translated into profit and loss in 2009).

It was emphasised that insurance liabilities are less confidence sensitive than the banking ones. CEIOPS members closely monitor lapse risks especially in the life sector.

An extended CEIOPS Managing Board Meeting (Managing Board and CEIOPS members) was scheduled for 4 December 2008. A number of high-level supervisors were nominated to stand ready to intervene as mediators between the CEIOPS members, should there be a need. CEIOPS is also conducting a study on national approaches and best practices in order to better co-ordinate supervisory actions across the EU.

4. Occupational Pensions Issues.

A Commission representative informed about the state-of-play of 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*" which was launched at the beginning of September 2008.

The first reactions to the consultation have been positive. Stakeholders generally believe that the topic is very complex and sensitive. In their view, the positive sight of the consultation is that it enables to collect more information before taking a decision.

In order to draw first lessons from the consultation, the Commission will organise a public hearing on 16 February 2009 in Brussels (after the EIOPC meeting the Public Hearing was re-scheduled for 27 May 2009).

5. Solvency II.

a) Update on the Level 1 negotiations in Council and Parliament.

The Chairman reported on the Level 1 discussions and negotiations in the European Parliament and in the Council.

b) Presentation of QIS4 results and EU summary report by CEIOPS (*QIS4 summary report*).

CEIOPS presented a summary of QIS4 results. The presentation is attached to the draft minutes (Annex 2).

c) Preparing the ground for Level 2 implementing measures: next steps and timeline.

A Commission representative presented a note on the next steps and timeline for the preparation of the implementing measures for the Framework Directive. The Commission Services acknowledged that it would be difficult at this stage to outline with certainty a timetable, but nevertheless considered it helpful to outline what the timing might be. The outline is based on the Commission Proposal and therefore assumes an implementation deadline of 31 October 2012. The Commission Services aim to adopt all implementing measures by April 2011 in order to give all stakeholders involved enough time to prepare for the new regime.

In order to ensure a timely adoption of the implementing measures various work streams need to be brought together: CEIOPS' Advice, finalisation of the impact assessment, a potential further quantitative impact study and translations. The different work streams were set out in annex 2 of the note. The Commission Services also introduced the structure CEIOPS should follow when preparing its Advice. The Commission Services underlined again the need to receive complete and comprehensive advice covering both potential future implementing measures and Level 3 guidance as the ultimate split between Level 2 and Level 3 will be decided by the European Commission in close consultation with the European Parliament and with the Council.

Some Member States underlined the need for a principle-based approach in Level 2. CEIOPS noted that the timetable is very tight and asked whether it would be possible to move the implementation deadline. The Commission Services pointed out that, unless it would be stated otherwise in the final text of the Directive, the implementation deadline would be 31 October 2012.

d) Impact assessment work on Level 2 implementing measures and discussion of the draft Call for Advice from CEIOPS

The Commission Services presented the Draft Call for Advice to CEIOPS on its contribution to the Impact Assessment ('IA') work on Level 2 implementing measures for Solvency II. It also includes the "*List of policy issues and options*" that should be analysed as part of the Level 2 IA and is annexed to the draft Call for Advice.

The Commission Services underlined the "dynamic" nature of the List. It is a living document that will be regularly updated, in the light of the political negotiations and progress made by CEIOPS in the development of its Level 2 Advice. In addition, the purpose of the List is to ensure that the work of all parties involved in the Level 2 IA is joined-up and based on the analysis and comparison of the same set of policy options and issues.

The Commission Services informed the EIOPC members that the Call for Tender for the external study in the context of the Level 2 IA was due to be published imminently. The Study will focus on the areas of mass risks, health insurance, long-term savings and retirement products, business to business insurance, and administrative costs.

A discussion followed, both on the Draft Call for Advice and "*List of policy issues and options*". Main comments related to the following:

- CEIOPS and several Member States expressed concerns about the possible additional burden for CEIOPS related to the required co-operation with the external consultant;
- confidentiality issues with respect to the data to be shared with the external consultant;
- involvement of EIOPC in the Steering Committee for the external study;
- deadline (10 days) for the delivery by CEIOPS of QIS4 data;

- living nature of the "*List of policy issues and options*" and the need to update the List in light of the policy development;
- appropriate level of detail with respect to the issue of "Supervisory reporting" (see "*List of policy issues and options*");
- treatment of the issue of "participations" (see "*List of policy issues and options*"); and
- use of QIS5 results in the Level 2 IA work.

Member States were invited to provide the Commission with written comments by 17 December 2008.

6. Insurance Mediation Directive.

a) Update on the implementation check of the IMD announced at the 10th EIOPC meeting.

At the 10th EIOPC meeting the Commission announced that it would conduct its own implementation check of the Insurance Mediation Directive ('IMD'). The implementation check will be oriented on the existent provisions of the directive, especially those effecting/limiting cross-border provisioning of insurance mediation services by agents and brokers.

In June 2008 the Commission has presented to the EIOPC members a Questionnaire on "*Retail Investment Products*" focusing on unit-linked life assurance policies. In this questionnaire, sent out on 25 August 2008, the Commission expressed its belief that there may be a risk that policyholders with regard to unit-linked life insurance do not receive, on a pre-contractual basis, sufficient information on the costs and features of the underlying investments. The issue concerns not only the Life Assurance Directive but equally the IMD, particularly from the perspective of the code of conduct of intermediaries (see also point 7 below).

b) Second series of questions under the IMD implementation check by the European Commission.

A Commission representative informed the EIOPC that the second set of questions under the IMD implementation check would be soon finalised. The questions are intended to cover several areas, such as

- exemptions to the scope of the IMD, e.g. Art. 1(2);
- coherent application of definitions – e.g. that of tied insurance intermediary or home Member State of insurance intermediaries;
- registration requirements and organisation of the register;
- professional requirements going above the standard prescribed by the IMD; and
- the notification procedure or as already indicated the pre-contractual information.

The Commission Services expressed their belief that there was a need to clarify and check various issues falling under the scope of the IMD which are being brought to its attention by queries and complaints.

c) European Commission's view on the necessity to transpose Article 4(7) of the IMD.

At the 10th EIOPC meeting the Commission Services informed the members about the automatic review of the amounts under Article 4(7) of the IMD. A survey conducted by CEIOPS in 2008 that a majority of Member States transposed this provision wrongly or not at all. The Commission Services urged the Member States to ensure a correct transposition of this Article, respecting the revised amounts communicated at the 10th EIOPC meeting. The reviewed amounts are applicable since 15 January 2008.

7. Retail Investment Products.

A Commission representative provided an update on the Retail Investment Products project. As far as insurance is concerned, the project covers unit-linked life policies and hence affects the Life Assurance Directive and the Insurance Mediation Directive (IMD).

The Commission sent a questionnaire to the EIOPC members on unit-linked life policies at the end of August 2008. This questionnaire focuses not only on the IMD, but also on the way Member States have addressed product disclosures for unit-linked life policies referred to in Annex III of the Life Assurance Directive. Only one Member State has not responded. A summary will be prepared for submission at the forthcoming EIOPC meeting.

8. Legal Expenses Directive.

The Commission Services received in 2008 several complaints alleging a wrongful application of several key provisions of the Council Directive 87/344/EEC on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance.

The Commission Services intend to prepare a questionnaire to clarify practices of the Member States as regards rights of the insureds enshrined in Articles 4 and 6 of the Directive. In addition, the Commission Services also intend to collect information as to whether and to what extent the Member States used the opportunity to enable the legal expenses insurers to defend the interests of the insureds both in court and out-of-court proceedings.

9. Guarantee Schemes.

a) Presentation of the results of the consultation on Insurance Guarantee Schemes.

The Commission Services reported on the latest developments on the insurance guarantee schemes dossier.

The Commission Services consulted publicly on the main findings of the OXERA Report on Insurance Guarantee Schemes in the EU from 7 May 2008 to 7 July 2008 (http://ec.europa.eu/internal_market/insurance/docs/guarantee_schemes_en.pdf). The Commission Services briefly summarized the results of that public consultation. 30 contributions were received, from European and national associations, insurers, supervisors, ministries, a consumer panel, an insurance guarantee scheme and the Committee of European Insurance and Occupational Pension Supervisors. A summary of the results of the public consultation including the comments received during the public hearing of 2 June 2008 are published on the insurance website of the Commission (http://ec.europa.eu/internal_market/insurance/guarantee_en.htm#oxera).

The Commission Services reported that Commissioner McCreevy had instructed his Services to continue working on the insurance guarantee schemes dossier, in coordination with the work on investor compensation schemes. A decision on the insurance guarantee schemes dossier would be announced in the Commission's paper on the 'follow up to the crisis' measures, early in 2009. CEIOPS confirmed its preparedness to contribute to the future work on the insurance guarantee schemes dossier.

b) Recent developments in the area of Deposit Guarantee Schemes.

The Commission Services reported on the recent developments in the area of Deposit Guarantee Schemes.

The European Commission adopted on 15 October 2008 a Directive Proposal amending Directive 94/19/EC on Deposit Guarantee Schemes as regards the coverage level and the payout delay. In the moment of the EIOPC meeting, the Proposal was still in negotiations in the

European Parliament and the Council. The main changes proposed by the Commission are as follows:

- Level of coverage for deposits: Member States are required to increase the coverage level to at least €50,000 immediately and by the end of 2009 to €100,000.
The current Deposit Guarantee Schemes Directive covers savings up to at least €20,000, although individual Member States can choose to increase this level.
- Co-insurance (i.e. where the depositor bears part of the losses) is proposed to be abandoned: Member States must ensure that the deposit is reimbursed up to the coverage level.
Under the current Directive, Member States have the option to decide that deposit guarantee only covers 90% of savings.
- Reduction of the payout delay: The competent authorities shall make their determination as soon as possible and at the latest 3 days after first becoming satisfied that a credit institution has failed to repay deposits which are due and payable. The time allowed for the deposit guarantee scheme to pay depositors in the event that a bank fails will then be reduced to three days.
Currently the period is three months, and can even be extended to nine months.
- The Proposal also introduces a general cooperation requirement, i.e. that 'home and host' schemes cooperate with each other to ensure rapid payout.
- Pursuant to the Proposal, the European Commission shall by the end of 2009 report and accompany such a report with any appropriate proposals on a harmonisation of the funding mechanisms of deposit-guarantee schemes and the possible introduction of a Community deposit-guarantee scheme.

10. Any Other Business.

a) General Good Requirements and Financing of Supervisory Authorities. Commission update on results from questionnaires issued at November 2007 meeting.

- General good requirements.

At the EIOPC November 2007 meeting (and once again at its June 2008 meeting), the Commission Services invited Member States to provide information on their general good requirements. Since then only 15 Member States had so far responded. Accordingly, Members of the Committee were once again asked to notify the 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.

- Financing of supervisory authorities.

This was another point first raised at the November 2007 meeting of the EIOPC Committee (and once again at the June 2008 meeting). 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.

b) Register of life insurance policies in Spain.

As a follow-up of the written question [E-5443/07](#) by Antolín Sánchez Presedo, MEP the Chair asked the Spanish delegation to present main features of the Spanish Registry of Insurance Contracts including Death Cover.

The Spanish Registry of Insurance Contracts furnishes anyone who may be concerned with information about the existence of death cover insurance in the name of a deceased person and the identity of the subscribing insurer. The Registry contains information on two types of insurance: life insurance and accident insurance covering the death of the insureds, including

both collective and individual policies. Insurance contracted in the scope of employment and business relationships, as well as contracts in which the policyholder and beneficiary is the same person, are excluded. Insurance companies must notify on a weekly basis the particulars of all insurance contracts concluded (including death cover), as well as any modifications or cancellations. The data to be notified include the identity of the insured, the insurance company's data and contract particulars such as number and type of cover.

Inquiries may be lodged at any time at least 15 days after the decease of the insured. The person lodging the inquiry must attach the death certificate of the deceased. A fee (€3.40) is charged per each certificate. Within seven days of submission of the request, the Registry shall issue a certificate listing the contracts of the deceased insured, and the names of the respective insurers.

c) Report by the European Commission on the European Parliament's resolution on certain issues relating to motor insurance adopted on 2 September 2008.

A Commission representative reported on the recently adopted resolution of the European Parliament on certain issues relating to motor insurance (EP Non-legislative resolution [T6-0386/2008](#) dated 2 September 2008).

The Commission Services presented their own policy actions in the motor insurance area, the main conclusions of the resolution and drew the members' attention to the most important calls the European Parliament had addressed both to the European Commission and to Member States.

In this context, the Commission Services responded to questions concerning the state of play of the ROME II Study on compensation of cross-border victims. The Commission Services informed the members that they had currently been evaluating the draft final study presented by the study contractor and that they would decide on the appropriate follow up in the course of the next few months.

d) Update on the intended US legislation on Holocaust era insurance claims.

Further to the report presented at the June 2008 EIOPC meeting, the draft legislation in question (House of Representatives 1476/2007) was in September 2008 abandoned. At the same time there had not been any parallel legislation introduced in the Senate.

e) Proposals for non-discrimination Directives and status of Gender Directive.

- Article 13 EC Treaty initiative.

The European Commission informed the EIOPC members of the Proposal for a Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation adopted on 2 July 2008. Article 2(7) of the Proposal establishes conditions under which in the provision of financial services proportionate differences in treatment are permitted. The derogation as enshrined in Article 2(7) differs with regards to the opt-out under the Gender Directive (Council Directive 2004/113/EC), i.e. *inter alia* there is no requirement for publication of the data, no obligation of implementation of the measure into national law by certain date.

The EIOPC members were also informed that the Commission would initiate a dialogue with the insurance and banking industry together with other relevant stakeholders to achieve a better common understanding of the areas where age or disability are relevant factors for the design and pricing of the products offered in these sectors.

- Proposal for a Directive on the application of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Directive 86/613/EC.

The European Commission adopted the Proposal for a Directive on 1 October 2008. The Proposal excludes from its scope matters covered by the Gender Directive (Council Directive 2004/113/EC), i.e. the derogation under Article 5 of the Gender Directive remains applicable.

- Gender Directive.

The Commission maintains that some 7 Member States have not by the moment of the EIOPC meeting communicated the measures implementing the Directive into their national law. The Commission Services have not yet started the conformity check of national implementing measures with the Directive.

By 2010 the Commission will also draw up a summary report, which shall include a review of the current practices of Member States in relation to the opt-out under Article 5.

f) Annual review of the minimum guarantee funds (life, non-life and reinsurance) and the premium and claims indices.

The Commission Services will inform the members of the EIOPC of the review of the minimum guarantee funds (life, non-life and reinsurance) and the premium and claims indices in the written procedure. The annual review of the said values is required by Article 1(5) of Directive 2002/13/EC, Article 30 of Directive 2002/83/EC and Article 41 of Directive 2005/68/EC.

g) Report by the Czech Republic's delegation on the forthcoming EU presidency.

The Czech Republic's delegation reported on the priorities of the Czech Republic's Presidency of the EU Council in the area of internal market.

Next meeting

No further points being raised, the Chairman closed the meeting. The Chairman announced a tentative schedule for 12th, 13th and 14th meeting respectively being in the week of 2 April 2009, 18 June 2009 and 26 November 2009 respectively.