



**Ares:Markt/H2(2009)123215**

**June 2009**

**Draft Minutes of the 12th meeting of the  
European Insurance and Occupational Pensions Committee**

*Brussels, 3 April 2009*

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

### 2. Minutes of the 11<sup>th</sup> meeting of the EIOPC held on 26 November 2008.

The French delegation requested an amendment of the Minutes of the 11<sup>th</sup> EIOPC meeting by inserting a brief on discussions relating to the hybrid capital. The proposed text will be inserted under point 3(a) of the minutes. It reads as follows

"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."

The Chairman informed the EIOPC members that after a careful consideration, the Commission Services had come to the conclusion that the Solvency I rules should not be amended.

Apart from this, no further requests for changes to, or comments on, the draft minutes were raised and the minutes of the 11<sup>th</sup> meeting of the EIOPC as tabled by the Commission were adopted.

### 3. Financial Crisis.

#### - Note on Potential impact of the financial crisis on the insurance sector.

Participants intensively discussed the issues raised in the Note sent to the EIOPC members in March 2009. The Note was sent only as an internal discussions document for the 12<sup>th</sup> EIOPC meeting.

#### - Developments at G-20 level, Report by the high-level group on financial supervision in the EU – de Larosière Group and Communication of 4 March 2009 for the Spring European Council – Driving European Recovery.

A Commission representative presented a summary of the most recent developments as far as the response to the financial crisis is concerned.<sup>2</sup> The presentation is attached to the draft minutes (Annex 1).

---

<sup>2</sup> [http://ec.europa.eu/internal\\_market/finances/docs/de\\_larosiere\\_report\\_en.pdf](http://ec.europa.eu/internal_market/finances/docs/de_larosiere_report_en.pdf) (de Larosière report),  
[http://ec.europa.eu/commission\\_barroso/president/pdf/press\\_20090304\\_en.pdf](http://ec.europa.eu/commission_barroso/president/pdf/press_20090304_en.pdf) (Communication of 4 March

Some Member States raised questions relating to the rationale for the separation between micro and macro-level supervisory bodies and also how the interests of insurance would be taken into account in the new structures. A number of Member States identified differences in insurance and banking models. Some Member States also referred to stabilisation measures undertaken by governments, sustainability of insurance guarantee schemes under stress situations and early redemptions of life assurance policies.

The Chairman in replying to these questions emphasised the current international focus on macro-prudential supervisory issues (in USA, G-20 etc.) and the usefulness of specialised bodies to carry out this task. In addition, the Chairman pointed out that insurers had taken intellectual leadership from bankers in finding solutions (e.g. Solvency II being more sophisticated than CRD). Therefore they will have to be listened to, whatever precise structures are decided on for the supervisory architecture. The Chairman also indicated that early redemptions of life assurance policies might be caused by their mis-selling as they create unreasonable expectations.

CEIOPS Secretary General described the outcome of the de Larosière Group as a realistic one. However, it lacked a reference to pensions. CEIOPS Secretary General also mentioned that any new insurance authority would need far more than 15 staff which CEIOPS currently has; that funding should not come only from the Commission; that in the new ESRC and ESFS the link between micro and macro level is very important; that it is important to have equality between different parts of the new structure, including supervisory bodies. It was also mentioned that within CEIOPS there is no unanimity on the number of new micro-supervisory bodies, nor is there any conclusive empirical evidence that one model is better than another. Finally, within CEIOPS there is no unanimity on the question of binding powers for the new authorities.

CEIOPS Secretary General also introduced and commented on the CEIOPS document 'Lessons learned from the crisis (Solvency II and beyond)' published on 19 March 2009.<sup>3</sup> CEIOPS Secretary General mentioned the potential need to modify correlations at Level 2 taking into account the lessons learned from the crisis. Having regard to the annex to the Solvency II Directive, CEIOPS asked whether this would be possible. The Chairman confirmed that this would be possible.

It was pointed out by the participants that we have to raise as many lessons from the crisis as possible. The future work must be, however, balanced with a long-run perspective so that the regulators do not get in pro-cyclical behaviour. Procyclicality will be an important issue. For a number of Member States credit insurance and accounting are being important as well.

A Commission representative informed the EIOPC members about ongoing work on the Recommendation on remuneration in financial services sector.

Last but not least, the Chairperson also mentioned that the issue as to what extent the same valuation for Solvency II purposes can be used for financial reporting purposes will be considered.

#### **4. Solvency II.**

The Chairman reported on the Level 1 discussions and negotiations in the European Parliament and in the Council. The Chairman also referred to future work at the Level 2. After the adoption of the Directive, the Commission will write a letter to CEIOPS, as a follow-up of the letter sent

---

2009 for the Spring European Council – Driving European Recovery), <http://www.g20.org/366.aspx> (Group of Twenty).

<sup>3</sup> <http://www.ceiops.eu/media/files/publications/reports/CEIOPS-SEC-107-08-Lessons-learned-from-the-crisis-SII-and-beyond.pdf>.

in July 2007. It would contain a Solvency II timetable (including QIS5), the updated list of the Level 2 implementing measures, the format and the structure for CEIOPS advice and the updated List of policy issues and options for impact assessment.

The Chairman also stated that the Commission would reconvene the 'Expert Group on Insurance: Solvency.' A first meeting is scheduled for 6 May 2009. Further meetings are currently foreseen for July, September, October, November and December.

A Commission representative reported then on the Impact Assessment work related to the development of the Level 2 implementing measures. The Call for Advice for contribution on the analysis and comparison of the various policy options was sent to CEIOPS and is available on the Commission's website together with the letter sent to CEIOPS and the List of policy issues and options ('List').<sup>4</sup> Further, an update was provided on the Call for Tender for the external study on the areas of mass risks, health insurance, long-term savings and retirement products, business to business insurance, and administrative costs.<sup>5</sup> As far as the next steps are concerned, the List would need to be adjusted after the adoption of the Solvency II Directive; the relevant objectives for each policy issue need to be agreed upon; the Commission Services also intend to set up a Steering Committee which will steer the work of the contractor.

CEIOPS Secretary General reported on pending and future work as far as implementing measures are concerned. The presentation is attached to the draft minutes (Annex 2).

A representative of the Czech Republic commented on the compromise reached in the Council and in the trialogue.

During the discussion a number of Member States asked whether the Commission Services had a timetable for the implementing measures. In addition, Member States asked whether these measures would be adopted in the form of directives or regulations. Member States also asked whether the recast part of the Solvency II Directive would require a transposition. Last but not least, tables of concordance were referred to as a useful tool for the implementation process.

In responding to the Member States' questions, the Chairman stated that the timetable distributed at the 11<sup>th</sup> EIOPC meeting under the agenda item 5c would be updated. As regards the legal form of the implementing measures, this will be discussed on 6 May 2009 at the 'Expert Group on Insurance: Solvency.' The choice of the legal form of the implementing measures will determine the time needed for their implementation. Only amended provisions of the recast part of the Solvency II Directive would need to be newly introduced into national law. The Commission Services intend to prepare a list indicating the changes under the recast exercise.

## **5. Insurance Mediation Directive.**

On 19 February 2009 the Commission Services sent to the members of EIOPC a survey on the application of Article 1(2) of the IMD. Article 1(2) lists cumulative conditions to be fulfilled in order to exempt persons providing mediation services for insurance contracts from the scope of the Directive. The Commission Services' interest was particularly focused on the national practices of applying this provision to car rental companies offering complementary personal insurance. Based on the replies received Member States require car rental companies to comply with the provisions of the IMD when offering complementary personal insurance.

On 30 March 2009 the Commission Services sent to the members of EIOPC another survey on the transposition of a number of provisions of the IMD. The questions concerned the national

---

<sup>4</sup> [http://ec.europa.eu/internal\\_market/insurance/solvency/index\\_en.htm](http://ec.europa.eu/internal_market/insurance/solvency/index_en.htm)

<sup>5</sup> [http://ec.europa.eu/internal\\_market/insurance/solvency/index\\_en.htm](http://ec.europa.eu/internal_market/insurance/solvency/index_en.htm)

model of a tied insurance intermediary, home Member State of an intermediary in the form of a legal person, registration of intermediary's employees, professional requirements for intermediaries, general good and information requirements for insurance intermediaries. A Commission representative pointed out that the completion of the implementation check was planned by the end of 2009. On the basis of the assessment of the information gathered the Commission Services will decide on further steps regarding the review of the IMD scheduled for 2010.

## **6. Packaged Retail Investment Products.**

Regulatory standards for product information and requirements governing product sales vary significantly between different retail investment products even though these serve similar investor needs and they potentially lead to investor detriment and market distortions.

The Commission Services began prior to the financial crisis to focus on the information investors in 'packaged retail investment products' (PRIPs) receive and the risks and the ways these products are sold. PRIPs are the main investment products that dominate the retail market.

As outlined in the March Communication from the Commission for the Spring European Council on driving European recovery, the PRIPs project forms a key element in the steps the Commission Services propose to help retail investors.

A Commission representative also referred to the Communication on PRIPs of 29 April 2009.

## **7. Legal Expenses Directive.**

A Commission representative informed the EIOPC members about a survey on the application of certain provisions of Council Directive 87/344/EEC on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance (Legal Expenses Directive) sent on 31 March 2009. The Commission Services would like to find out *inter alia* (i) whether the right to freely choose a lawyer also exists prior to the commencement of legal proceedings, (ii) whether the right to freely choose a lawyer is dependent on who initiated the legal proceedings, i.e. whether the insured is the plaintiff or the defendant and (iii) what are the possible situations in which this right is restricted, for example in the context of class actions initiated on behalf of several insureds with regard to a common claim.

Finally, a Commission representative provided an update on the preliminary ruling *Dr. Erhard Eschig v UNIQA Sachversicherung AG* (Case C-199/08) lodged with the European Court of Justice on 15 May 2008.

## **8. Update on Occupational Pensions Issues.**

A Commission representative provided an update on two topics: the ongoing examination of solvency rules and the upcoming Commission report on key issues in the implementation of the IORP Directive.

As regards the examination of solvency rules, the EIOPC was provided with an overview of the responses received to the consultation launched in September 2008. The 60 replies were all posted onto the Commission's website in mid-March 2009 together with a summary in the form of a feedback statement. As regards technical provisions, a Commission representative emphasised that this question is of particular importance since Article 15(6) of the IORP Directive requires the Commission to review at least every two years the rules regarding the calculation of technical provisions and underlying assumptions with a view to further harmonisation and proposing measures to prevent possible distortions.

The next step will be a Public Hearing on 27 May 2009 in Brussels in order to draw first lessons from the consultation.

As regards the Commission Report on the IORP Directive, a Commission representative informed the EIOPC that the report is currently being finalised. It is intended to basically endorse the CEIOPS analysis, which concludes that there is no reason at this stage for legislative changes to the Directive.

## **9. Solvency I.**

A Commission representative informed the EIOPC members about the adaptation in line with the inflation of certain amounts laid down in Article 30 of Directive 2002/83/EC and Article 17a of Directive 73/239/EEC as amended by Directive 2002/13/EC. A notice regarding the adaptation was published in Official Journal C 41 on 19 February 2009. A corrigendum to the German version of the notice was published in Official Journal C 72 on 26 March 2009.

A Commission representative also informed the EIOPC members about the adaptation in line with the inflation of certain amounts laid down in Article 41 of Directive 2005/68/EC. A notice regarding the adaptation was published in Official Journal C 63 on 18 March 2009.

In accordance with the standard approach to implementation agreed at the 36<sup>th</sup> meeting of the Insurance Committee (adaptation of certain amounts laid down in Directive 2002/83/EC and Directive 73/239/EEC) and at the 8<sup>th</sup> meeting of the European Insurance and Occupational Pensions Committee (adaptation of certain amounts laid down in Directive 2005/68/EC), the revised amounts should be implemented by Member States under national law with an effective date for application before 1 January 2010.

## **10. State of Play of the Implementation of Recently Adopted Insurance Directives.**

The Chairman informed the members of the EIOPC about the plan of the Commission Services to check the implementation of recently adopted directives, i.e. IMD, IORP, 5<sup>th</sup> Motor and Reinsurance Directives. The members of the EIOPC agreed the Commission Services' proposed deadline and would send to the Commission Services missing tables of concordance by 18 May 2009.

## **11. Any Other Business.**

### **- Rome II Study.**

Rome II Study on compensation of victims of cross-border accidents in the EU was published on 29 January 2009.<sup>6</sup> The Study *inter alia* confirmed that Member States apply different concepts and rules on compensation awards and limitation periods.

Public consultation on compensation of victims of cross-border accidents in the EU was opened on 31 March 2009 and will end on 29 May 2009. The consultation paper is based on the ROME II Study.<sup>7</sup>

### **- Retail insurance Market Study: motor insurance and home insurance.**

The purpose of the study is to examine the reasons for the relatively low volume of cross-border retail insurance business. The study should also look into and explain the sometimes large price divergences between the EU 27 Member States for motor insurance and home insurance. In addition, the impact of the liberalisation of insurance tariffs introduced by the third generation of the EU life and non-life insurance directives should be analyzed as well.

The study should also identify some good practices especially with regard to reducing the cost of claims settlement and to innovative customised solutions applied in the process of price

---

<sup>6</sup> [http://ec.europa.eu/internal\\_market/insurance/docs/motor/20090129report\\_en.pdf](http://ec.europa.eu/internal_market/insurance/docs/motor/20090129report_en.pdf)

<sup>7</sup> [http://ec.europa.eu/internal\\_market/consultations/](http://ec.europa.eu/internal_market/consultations/)

calculation. Given certain structural similarities between the EU and US retail insurance markets, a comparison with the situation in the USA should be made.

### **Next meeting**

No further points being raised, the Chairman closed the meeting.

The Chairman announced a tentative schedule for 13<sup>th</sup> and 14<sup>th</sup> EIOPC meetings being in the week of 17 June 2009 and 26 November 2009 respectively.