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**Draft Minutes of the 13th meeting of the
European Insurance and Occupational Pensions Committee**

Brussels, 17 June 2009

Opening and welcome

The meeting was opened and chaired by Mr Elemér Terták, Director of the Financial Institutions Directorate 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 12th meeting of the EIOPC held on 3 April 2009.

A CEIOPS representative requested the deletion of the end of the sentence, on page 3, paragraph 3.

Apart from this, no further requests for changes to, or comments on, the draft minutes were raised and the minutes of the 12th meeting of the EIOPC as tabled by the Commission were adopted with the above deletion.

3. Update on Financial Supervision in Europe – Communication of 27 May 2009.

A Commission representative presented main conclusions of the Communication of 27 May 2009 on Financial Supervision in Europe. The presentation is attached to the draft minutes (Annex 1).

The main legal basis of the intended legal measures will be Article 95 of the Treaty (with co-decision and qualified majority in the Council). The specific scope of the authorities to intervene will derive from sectoral legislation which therefore will have to be amended accordingly.

Concerning appeals, addressees of the decisions in question will be entitled to lodge them. In case of arbitration decisions and decisions taken in crisis situation, the national supervisors and financial institutions respectively will be entitled to lodge an appeal with the appeal body. As regards binding technical standards which will be formally adopted by the Commission, most probably annulment procedure under Article 230 of the Treaty could be invoked.

A Commission representative also explained that it is envisaged that the current Level 3 guidelines and/or technical standards would be made mandatory. For that reason it is needed to identify in the recast part of the Solvency II Directive areas where it would be suitable to introduce mandatory technical standards. The recast part of the Directive would be amended accordingly.

A Commission representative also pointed out that the temporal interaction between the Solvency II Directive and envisaged legislative package would not pose any legal problem. The reason is that the amendments will concern the provisions of the recast part of the Solvency II Directive which are currently applicable. However, this may mean that the future European Insurance and Occupational Pensions Authority may have no scope to exercise its powers during the first months of its existence.

The participation of new authorities in the international bodies has not been decided yet.

The EIOPC members were also reminded of the public consultation on the Commission Communication of 27 May 2009. The deadline is 15 July 2009.

A CEIOPS representative welcomed the prompt reaction of the Commission and supported the future work on the new supervisory architecture, underlining their already voiced concerns regarding the independence of the new Authority and the lack of balance in the new European

Systemic Risk Board. The CEIOPS representative expressed confidence that the European Institutions will take these major issues into account in their future work.

4. Solvency II – Update on the Organisation of the Level 2 Related Work.

A Commission representative reported on the letter sent to CEIOPS on 12 June 2009 on further work on Solvency II. The draft letter was discussed during the first meeting of the reconvened "Experts Group on Insurance Solvency" on 6 May 2009, and finalized following comments received from Member States, CEIOPS, industry and stakeholders. The letter contains 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 next meeting of the 'Expert Group on Insurance: Solvency' will take place on the 6 July 2009. On this occasion, the external contractor who was awarded the Study on Impact Assessment for the level 2 measures of Solvency II (Deloitte) will present its work plan. Further meetings of the 'Expert Group on Insurance: Solvency' are scheduled for September, October, November and December.

A Commission representative reported on the status of the process for the formal adoption of the Solvency II Directive. The text is still with the European Parliament and the Council has not received it yet (so called 2nd transmission).

Member States are invited to provide the Commission Services with any comments concerning the translation. Member States will also be promptly informed about the forthcoming Council translation meetings.

A CEIOPS representative thanked the Commission Services for the cooperative approach with regard to the above letter on further work.

The CEIOPS representative provided an update on the status of the three waves of advice from CEIOPS on level 2 measures. In addition, the CEIOPS representative pointed out the full work load due to new work streams (e.g. IGS, PRIPs) and the future transformation of the financial architecture that will affect its operations. The CEIOPS representative underlined that in order to increase efficiency, some flexibility with regard to the deliveries on Solvency II is needed, especially with regard to the development of level 3 guidance.

According to the CEIOPS representative, with regard to level 2 measures, CEIOPS will deliver, as comprehensive as possible, an advice to the Commission as requested, and welcomes concrete steering from the Commission during the development of the advice. Considering Level 3 to be one of the core tasks of a Level 3 Committee, the CEIOPS representative pointed out that it is CEIOPS' own responsibility under the Lamfalussy framework to develop these measures. As said by the CEIOPS representative CEIOPS will need to prioritize future work on level 3 measures and to adopt a sequential approach, in the light of the many tasks assigned to CEIOPS. The CEIOPS representative also pointed out that this would mean developing level 3 guidance only when a clear view on the level 2 measures exists, bearing in mind that some level 3 guidance could only be developed after the implementation. A number of Member States supported CEIOPS request.

The EIOPC members were also reminded of the forthcoming meeting of the 'Expert Group Insurance: Solvency' of 6 July 2009.

5. Update on Occupational Pensions Issues.

A Commission representative provided a short summary of the panel discussion that took place at the Public Hearing 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 on 27 May 2009 in Brussels. He mentioned that the discussions and interactive debate had been very useful for the Commission Services. A full summary of the Public Hearing has been posted on the website.² As regards the next steps, the Commission Services emphasised that no decisions had yet been taken.

One Member State asked whether IORP II Directive is still far away. A Commission representative replied that it is too early to answer to this question. Another Member State suggested that the discussion during the Public Hearing had revealed a consensus that more work is needed in areas such as disclosure, transparency, risk-management and governance.

Another Member State pleaded to go even further and more quickly. A failure in the area of pensions would have much more severe financial and political consequences than a failure in insurance. The delegate also argued that it is important to ensure a level playing field for all actors in the field of occupational retirement provision. Some pension funds offer insurance-type products. More harmonisation within the single market would enhance trust and confidence in private pension products. This position was put into perspective by two other Member States, pointing to the sensitiveness of the issue in their respective countries. It was suggested that any further step should be accompanied by an in-depth Impact Assessment.

Another Member State recalled the challenges posed by an ageing population. Further legislative proposals should take this into consideration in order to mitigate its effects in the long term. The delegate pointed particularly to the "meltdown hypothesis" in financial markets and that this is an EU wide challenge.

A delegate from another Member State expressed the view that nationally organised supervision and guarantee schemes are much more appropriate and better suited to provide a high level of protection to pensioners. Moreover he argued that it is a triad of issues that shape the EU field for occupational pensions, namely taxes, portability and the IORP Directive. While the financial services field has delivered, taxes and portability have not been resolved so far.

The Commission Services concluded that there is pressure from the European Parliament and some Member States to take concrete action in this field, but that it is too early to determine precisely what action. A reflection time is needed to take the right decisions, but this does not necessarily imply an undue delay. A number of rules in the IORP Directive are probably outdated and there appears to be common ground to introduce improvements in some areas. It was suggested that there is an opportunity to be proactive in order to avoid fixing once the damage is done. The social aspects clearly need to be taken into account, but IORPs also exert a significant influence on financial stability.

6. Insurance Mediation Directive.

(a) Communication of 29 April 2009 on Packaged Retail Investment Products and planned revision of the IMD.

A Commission representative described the outcomes of the Communication on Packaged Retail Investment Products (PRIPs), i.e. horizontal approach in regulating product disclosures and selling practices of PRIPs. As regards insurance products, this concerns solely life investment insurance policies, typically unit-linked life insurance products.

A Commission representative also described weaknesses in the current insurance on product disclosures *acquis* (Life Assurance Directive/recast part of the Solvency II) and conduct of business rules and selling practices (Insurance Mediation Directive (IMD)). Currently, the key

² http://ec.europa.eu/internal_market/pensions/commission-docs_en.htm

investor document (KID) under UCITS IV Directive is the benchmark for product disclosures and MiFID for selling practices.

By the end of 2009, the Commission Services will publish a document which will describe the way forward.

(b) Implementation check of the IMD and assessment of the questionnaires.

A Commission representative informed the EIOPC members that the questionnaire of March 2009 reveals the weaknesses of minimum harmonization of the IMD and existence of obstacles to the functioning of Single Market for insurance intermediaries as well as for effective consumer protection.

A Commission representative also informed the EIOPC members that the Commission Services intend to send another questionnaire. According to Recital 95c of the Solvency II Directive, the Commission must present a proposal for a revised IMD by the end of 2010.

Preparatory works have already started. The revision of the IMD will consist of a review of the existing provisions and of adaptations to the IMD from the Communication on Packaged Retail Investment Products. The objective is to have a more modern and more harmonized IMD II, preferably a Lamfalussy-type Directive.

One Member State requested the information concerning the plans for the announced legislative follow-up on the Recommendation on remuneration in the financial services sector. A Commission representative responded that no final decision had been taken. At this stage it is however envisaged to include the legislative follow-up in the level 2 measures of Solvency II. In this regard, CEIOPS has prepared a consultation paper on remuneration which is scheduled for approval for public consultation at the next Members' Meeting in June 2009.

7. Assessment of the Questionnaire on the Application of the Legal Expenses Insurance Directive.

A Commission representative provided an assessment of replies received to its questionnaire on the application of the Legal Expenses Insurance Directive which had focused on the right of the insureds to freely choose a lawyer in legal or administrative proceedings. The majority of the Member States indicated that despite the legal possibility for the insurer to represent the insured, this option is not common practice. Furthermore, the Member States do not seem to have problems with this principle, since the Legal Expenses Insurance Directive is a minimum harmonization measure.

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. The Opinion of Advocate General Trstenjak indicates support for a more extensive interpretation of the right to freely choose a lawyer in legal or administrative proceedings.

8. State of Play of the White Paper on Insurance Guarantee Schemes.

A Commission representative informed the EIOPC members about the latest developments concerning insurance guarantee schemes (IGS).

In February 2009 the *de Larosière Group* recommended the setting-up of harmonized IGS in Europe. In light of these developments the Commission in the Communication of 4 March 2009 "Driving European recovery" announced a review of the adequacy of existing guarantee schemes in the insurance sector by the end of 2009 and that it will make appropriate legislative proposals.

To this end the Commission intends to adopt a White Paper by the end of 2009 setting out a European solution on IGS including appropriate follow-up measures. In line with better

regulation principles the White Paper will be accompanied by an impact assessment report. The White Paper builds on the extensive work carried out since 2001.

On 5 May 2009 the Commission sent a letter to CEIOPS asking for their contribution by the end of June 2009. The report will include issues such as the role and ways of intervention of IGS, coverage, geographic scope, organisation, structure and funding and also a chapter on pension guarantee schemes. The Commission Services also held informal meetings with stakeholders in May and June 2009. The minutes of the meetings are published on the Commission's website.³

A Commission representative briefly explained the methodology the Commission Services plan to use in order to quantify the impacts of the IGS initiative. The Commission Services intend to take into account the existence of Solvency II and the fact that losses can hit consumers only when solvency requirements under Solvency II are exhausted.

A loss distribution will be produced by associating in each Member State a probability of losses for the IGS. It means that any level of financial resources the IGS would be endowed with would be associated to a relative level of security in the capability the IGS would have to cover residual losses hitting consumers.

CEIOPS confirmed that the report on IGS would soon be available and that it stands ready to further support the work on this dossier.

9. Any Other Business.

(a) Implementation of recently adopted insurance directives (IMD, IORP, 5th motor and reinsurance) – follow-up.

A Commission representative informed the EIOPC members that the Commission Services had received all 4 transposition tables from 14 Member States. He therefore asked the remaining Member States to reply by 3 July 2009 at the latest.

(b) Effects of the swine flu on the insurance sector.

CEIOPS Secretariat informed the EIOPC members that the next CEIOPS Report on Financial Conditions and Stability will *inter alia* refer to the impact of the swine flu on the insurance market.

Next meeting

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

A Commission representative announced a tentative schedule for the 14th EIOPC meeting being in the week of 26 November 2009.

³ http://ec.europa.eu/internal_market/insurance/guarantee_en.htm