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**Draft Minutes of the 14th meeting of the  
European Insurance and Occupational Pensions Committee**

*Brussels, 26 November 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 amendments.

### **2. Minutes of the 13<sup>th</sup> meeting of the EIOPC held on 17 June 2009.**

No requests for changes to, or comments on, the draft minutes were raised and the minutes of the 13<sup>th</sup> meeting of the EIOPC as tabled by the Commission were adopted.

### **3. Update on Financial Supervision in Europe – State of Play in Council Discussions.**

On 23 September 2009 the European Commission adopted a package of draft legislation to strengthen the supervision of the financial sector in Europe. The aim is to enhance cooperative arrangements in order to reinforce financial stability throughout the EU; to ensure that the same basic technical rules are applied and enforced consistently; to identify risks in the system at an early stage; and to be able to act together far more effectively in emergency situations and in resolving disagreements among supervisors. The legislation will create a new European Systemic Risk Board (ESRB) to detect risks to the financial system as a whole with a critical function to issue early risk warnings to be rapidly acted on. It will also set up a European System of Financial Supervisors (ESFS), composed of national supervisors and three new European Supervisory Authorities for the banking, insurance and occupational pensions sectors and securities.

On 26 October 2009 the European Commission adopted legislative proposals to ensure that the new Authorities can work effectively ("Omnibus Directive"). These proposals lay down in detail the scope for the Authorities to exercise their powers, ensuring a more harmonised set of financial rules through the possibility to develop draft technical standards, settle disagreements between national supervisors and facilitate the sharing of micro-prudential information. The package of 26 October 2009 envisages a creation of the ESFS for the supervision of individual financial institutions ("micro-prudential supervision"). The ESFS will consist of a network of national financial supervisors working in tandem with new European Supervisory Authorities, a European Banking Authority (EBA), a European Insurance and Occupational Pensions Authority (EIOPA), and a European Securities and Markets Authority (ESMA).

A Commission representative summarised the most important developments. The Council reached a general approach at ECOFIN on 2 December 2009 based on the following principal changes to the Commission's proposals:

- For decision-making in the Authorities on dispute settlement between national supervisors (Article 29), QMV will be used in a specific case: according to Article 29(1), "for decisions taken by the consolidating/group supervisor, the decision proposed by the panel shall be considered as adopted, if approved by a simple majority, unless it is rejected by members representing a blocking minority of the votes as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol No 36 on transitional provisions annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union". Simple majority voting (one man one vote) will be used for all other decisions (e.g. those to be taken by the supervisor of subsidiaries).

- On the safeguard procedure in cases where a Member State considers that an Authority decision impinges on its fiscal responsibilities (Article 23), there are additional procedural steps in case there is no qualified majority of Member States voting to annul an ESA decision.
- The existence of an emergency situation (Article 10) will be declared by the Council and not the Commission.
- Individual ESA decisions addressed directly to financial institutions have been maintained for cases of incorrect application of directly applicable Community law (Article 9) but have been deleted in emergency situations and dispute resolution situations (Articles 10 and 11).
- All matters for ESA dispute settlement between national supervisors (Article 11(1)) will be determined in future legislation.

The Commission representative also mentioned that the EIOPA Regulation would have to be amended to align it with Solvency II. Directives 2002/92/EC, 2001/17/EC, 2009/103/EC are not in the scope of the Regulation as they do not have prudential aspects. The EIOPA Regulation also envisages two stakeholders' groups - on insurance and reinsurance and on occupational pension issues. The draft Omnibus Directive adopted in October does not cover insurance. An insurance related Omnibus Directive will be proposed early in 2010. A future omnibus Directive will also cover the scope of disputes settlement issues.

The Commission representative regretted the deletion of powers of ESAs to take individual decisions addressed to competent authorities, among other dilutions of the text made by the Council. The proposals now go to the Parliament for consideration, which may well seek to reverse some of the changes to the Commission's text made by the Council.

As regards timing, proposed date for the creation of the new authorities is 1 January 2011. Budgets of the authorities will be by 60% funded by Member States and 40% by EU. Maximum continuity will have to be assured as the 3L3 committees will cease to exist. The new authorities will legally be Community regulatory agencies.

A Member State representative raised the issue of disagreements between national supervisors regarding capital add-ons. It was confirmed by the Chairman that it might also be a controversial issue for insurance. Another representative asked whether a later Omnibus Directive would also cover the scope of dispute settlement. The Chairman confirmed this.

A CEIOPS representative welcomed the process towards an enforced supervisory architecture and creating the European supervisory authorities. However, the representative also expressed some disappointments in this respect. The 3L3 committees were not invited to Council working group discussions. The representative also pointed out that the 3L3 committees can substantially contribute to the transition towards the new authorities. CEIOPS is concerned about the independence of the new authorities during the transitional period, as well as with regard to the funding of the three authorities, which will come partly from the Commission's budget, whereas an independent Community budget line may enhance independence. Furthermore, the CEIOPS representative stated that the Commission's power to partially endorse or adapt binding technical standards from the authorities raises concerns as to the independence of the authorities in making proposals on technical standards. Further discussions would be needed on the Commission's involvement in daily operations of the authorities and the role of the Board of Appeal.

#### **4. Solvency II – Recent Developments, Next Steps.**

##### **a) Recent Developments.**

The Chairman summarised the most important Solvency II related developments.

First of all, the Chairman thanked CEIOPS for the final CEIOPS' advice on level 2 implementing measures of 10 November 2009.

The Chairman mentioned the issue of illiquidity premium. He referred to a letter to CEIOPS of 17 November 2009 in which Director-General Jörgen Holmquist requested CEIOPS to set up and lead a Working Party, with a mandate to develop technical solutions on the illiquidity premium and on two further issues that relate to the discount rate to be used in the valuation of technical provisions. The Working Party should report back by the end of January 2010.

On 16 October 2009 the Insurance Solvency Experts Group discussed timetable for the level 2 measures and the date of application of Solvency II. The Commission will include in the Omnibus Directive of Spring 2010 a postponement of application of Solvency II to 1 January 2013. As of January 2010 the Group will hold two-day meetings per month.

##### **b) Impact Assessment - List of Policy Issues and Options.**

A Commission representative presented a slightly revised version of the *List of Policy Issues and Options for the Impact Assessment of the Solvency II Level 2 Measures (Version 3)* that includes two minor changes to the List in order to reflect CEIOPS ongoing work on the level 2 implementing measures. The Commission representative pointed out that after the meeting, the version 3 will be published on the DG MARKT's website.<sup>2</sup>

##### **c) Deloitte Study for the Level 2 Impact Assessment.**

A Commission representative informed the EIOPC members about the on-going Study for the Level 2 Impact Assessment by Deloitte. There have been a number of bilateral contacts between the Commission Services and the contractor. A Steering Committee, which includes Commission Services' representatives and representatives of ECB, CEIOPS and industry (CEA, AMICE) has also been set up. Three meetings of the Steering Committee have been held to date. In addition, CEIOPS has cooperated in answering to Deloitte requests on QIS4 data.

The Chairman announced that a public hearing would take place on 4 May 2010. At the public hearing the draft technical specifications for QIS5 accompanied by the draft calibration paper which CEIOPS will submit in March/April 2010 will be discussed.

In replying to a number of questions raised by a Member State representative and an EEA observer, the Chairman pointed out that the Solvency II Expert Group would discuss the insurance related Omnibus II Directive at its meeting on 17 December 2009. It is planned that the Omnibus II Directive will amend the Solvency II Directive in order to postpone its application to 1 January 2013. The Chairman mentioned that the impacts of the Omnibus III Directive (which relates to disagreements between home and host supervisors) are not yet known. The Chairman also confirmed that a cross-sector consistency is a priority for the Commission.

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<sup>2</sup> [http://ec.europa.eu/internal\\_market/insurance/solvency/index\\_en.htm](http://ec.europa.eu/internal_market/insurance/solvency/index_en.htm).

The CEIOPS representative made a summary of activities by CEIOPS. As regards the third set of advice on calibration of the risk modules, CEIOPS is very keen to receive detailed input from the industry, especially for the calibration of the SCR risk modules. With regard to the impact assessment, in Option 3 of the *List of Policy issues and Options*, 'Own funds – quantitative limits for SCR and MCR', CEIOPS has proposed a maximum of 15% Tier 3, rather than the maximum of 20% Tier 3 referred to in Option 3. The CEIOPS representative therefore proposed a further change to the List of Policy issues and Options.<sup>3</sup> The CEIOPS representative also pointed out that CEIOPS is dealing with other complex issues, such as participations, ring-fenced funds, future premiums – where the Commission will submit a note to CEIOPS explaining its position and the illiquidity premium. CEIOPS has also established a task force for developing standardised catastrophe scenarios. As regards QIS5 technical specifications, level 2 advice will be transformed into QIS5 technical specifications to test the impacts of CEIOPS proposal (by the end of March 2010). CEIOPS is also preparing level 3 guidelines which will help the Solvency II implementation.

The CEIOPS representative asked the Commission as to the process that will be followed during the informal L2 discussions in the Solvency Expert Group, especially where the Commission suggests deviating from CEIOPS' advice. The Commission underlines that it will justify the changes it proposes compared to CEIOPS' advice.

## **5. New Insurance Block Exemption Regulation.**

A Commission representative presented main features of the New Insurance Block Exemption Regulation. The presentation is attached to the draft minutes (Annex 1).

In answering a number of questions raised by a representative of one Member State, the Commission representative stated that all answers received had been carefully analysed. She pointed out that a question of specificity with the insurance sector in relation to each form of the agreements was assessed. As regards agreements on security devices, these are not specific enough to the insurance sector as they are also used by other sectors. As it is a general issue it shall be dealt with by the general horizontal guidelines. The horizontal guidelines are planned to be revised in order to take account of these standards. In addition, it was mentioned that this kind of agreements can well be legal under ex-Article 81(3) of the EC Treaty.

## **6. Update on the Insurance Mediation Directive Implementation Check and Plans for a future Revision.**

A Commission representative mentioned that the implementation check has shown that as a result of the minimum harmonization, the practical application of IMD provisions varies considerably between Member States. Gold-plating practices as well as the use of general good at national level create undesirable obstacles to the functioning of the Single Market for insurance and reinsurance intermediaries. He also stated that the check also revealed that the current level of consumer protection enshrined in the IMD is inadequate in terms of guaranteeing transparency and effective protection of customers/policyholders.

Therefore, it is planned that a proposal for a revised IMD ('IMD II') will be tabled (a considerable progress in this perspective will be done by the end of 2010). However, this process will have to be aligned with the revision of the Markets in Financial Instruments Directive (MiFID) and other relating work on Packaged Retail Investment Products (PRIPs).

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<sup>3</sup> It was agreed between Commission and CEIOPS representatives after the meeting that such an amendment was not needed as the possibility of having a maximum of 15% Tier 3 is already covered by Option 5 – A combination of the previous options.

The Commission representative pointed out that this will be a very complex file as it is intended both to enhance the rights of consumers (and equal level playing field as regards the selling of insurance products) and to facilitate cross-border provisioning. It is also intended to apply key conduct of business requirements of the IMD II to insurance undertakings and their employees and to turn IMD framework into a Lamfalussy Directive.

#### **7. State of Play of Packaged Retail Investment Products' Initiative.**

A Commission representative stated that in the second half of 2009 the Commission Services dealt with a number of issues such as priorities or scope of the dossier. The 3L3 cross-sectorial approach is favoured. CEIOPS and CESR provided their first input to this exercise in November 2009.

The Commission representative also made sure that it is distinguished between two branches of PRIPs: 1) new horizontal rules governing product disclosure, and 2) adaptation of the current MiFID rules to adequately regulate selling practices of PRIPs. He said that the biggest challenge is in combining the chosen horizontal approach with the necessity to consider sectorial specificities, which is particularly important in the insurance sector.

The CEIOPS representative invited the Commission to give sufficient time to CEIOPS when issuing a Call for Advice for further work on PRIPs. The 3L3 Committees have set up a joint Committee on PRIPs. CEIOPS welcomes a horizontal approach, but sectorial specificities should not be neglected.

#### **8. State of Preparations towards White Paper on Insurance Guarantee Schemes.**

The Chairman informed the EIOPC members that an Impact Assessment will be submitted to the Impact Assessment Board in February 2010 and that a Proposal on a White Paper on Insurance Guarantee Schemes including appropriate follow-up measures will be presented in 2010 in a package with proposals for amendments of the DGS and ICS Directives.

The Chairman mentioned that Insurance Guarantee Schemes provide last-resort protection to consumers when insurers are unable to fulfil their contract commitment, offering protection against the risk that claims will not be met in the event of a failure of an insurance undertaking. IGS can offer protection by paying compensation to consumers, or by securing the continuation of their insurance contract through for example facilitating the transfer of policies to a solvent insurer or the guarantee scheme itself.

As opposed to the banking and securities sectors there is no European legislation on guarantee schemes in the insurance sector today. Out of the 27 EU Member States, 12 operate one or more general IGS which cover either life and non-life insurance policies or just one category of it.

It is expected that Solvency II will further reduce the incidence of failures. However, neither the current nor the future solvency regime will create a zero-failure environment in the insurance sector. In the event of insolvency of an insurance undertaking the lack of appropriate insurance guarantee protection for consumers may trigger a number of harmful effects. These include financial hardship incurred by consumers, un-level playing field for industry, and loss of consumer confidence in the market.

#### **9. Update on the Legal Expenses Insurance Directive (*Case C-199/08, Eschig*).**

A Commission representative informed the EIOPC members about a judgement of the Court of Justice in Case C-199/08, *Eschig*. In the case, the Court overrode a condition in an insurance policy and decided that the Legal Expenses Insurance Directive (Council Directive 87/344/EEC) granting free choice of lawyers had to be respected regardless of the insurance contract. The Court has established the following:

- The aim of the Directive is to guarantee in all legal expenses insurance policies the free choice of a legal representative. Insured person has the right to entrust the defence of her/his interests to a representative from the moment that she/he has the right to claim from his insurer under the insurance policy, therefore prior to any legal or administrative procedure (Paragraph 50 of the Judgment).
- The right to freely choose a representative in the context of an inquiry or proceedings is not connected to the occurrence of a conflict of interests (Paragraph 52 of the Judgment).
- Exceptions to the right to select one's own counsel, provided for in the Directive, must be interpreted restrictively; and cannot therefore serve as a basis for reasoning by analogy. The exemption can only be granted in cases foreseen by the Directive itself (certain cases arising from the use of road vehicles) (Paragraph 59 of the Judgment).
- Therefore, EU legislator has not allowed for derogation for a case where a large number of insured parties are involved in a collective action (Paragraphs 60 and 61 of the Judgment).

The Commission representative also announced that results of a survey on the application of certain provisions of the Legal Expenses Insurance Directive will be soon made available.

### **10. Solvency I – Annual Examination of Certain Amounts Laid down in the Directives.**

A Commission representative presented results of the annual review completed in 2009 of the minimum guarantee fund (life and non-life) and the premium and claims indices (non-life) as required under Article 30 of Directive 2002/83/EC and Article 1(3) of Directive 2002/13/EC and the guarantee fund for reinsurance undertakings and captive reinsurance undertakings as required under Article 41 of Directive 2005/68/EC.

The reviews indicate that the increase in the consumer price indexes since the last adaptations do not exceed 5%. As a consequence no adaptations are required. The reviews have been conducted in accordance with the methodology proposed and agreed at the 36<sup>th</sup> meeting of the Insurance Committee (life and non-life) and at the 8<sup>th</sup> meeting of the European Insurance and Occupational Pensions Committee (re-insurance).

The Commission representative also emphasised that according to the reviews completed in 2008, the revised amounts of the minimum guarantee fund (life and non-life) and the premium and claims indices (non-life) and the guarantee fund for reinsurance undertakings and captive reinsurance undertakings should be implemented by Member States under national law with an effective date for application before 1 January 2010.

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

- **Pensions** (*Green Paper on Pensions*).

The Commission is planning the Green Paper on Pensions. In September 2009 President Barroso set out his political guidelines for the mandate of the next Commission to the European Parliament. The President describes the rationale that could drive the Commission's work on pensions looking forward, i.e. the crisis has shown the importance of the European approach to pension systems; the various pension pillars within each Member State are interdependent; common EU approaches on solvency and social adequacy are important; pension funds are an important part of the financial system. The political guidelines are a response to the increasing calls on the Commission to take a more holistic approach to pensions, rather than dealing with many specific issues separately.

The Chairman also mentioned that some discussions with the Member States are underway. The Economic Policy Committee (EPC) and the Social Protection Committee (SPC) are planning a Joint Report on Pensions in 2010. The Report will assess the sustainability and adequacy of pensions, looking at recent pension reforms, considering the impact of the current crisis and investigating the long-term perspective of further pension reforms.

As regards the IORP Directive, latest CEIOPS report shows that there are 76 cross-border cases (as of September 2009). The Commission Services need to assess how to make the IORP Directive work better and facilitate the conditions for cross-border business.

The Chairman also mentioned that the Commission Services have proposed to use technical standards in two areas: (i) supervisory reports and (ii) listing prudential rules to distinguish them more clearly from Social and Labour Law. In replying to a question by a Member State representative, the Chairman clarified that binding technical standards in the IORP regulatory framework could for example cover issues such as mortality tables.

○ **Stress testing exercise launched by CEIOPS.**

The CEIOPS representative informed the EIOPC members that CEIOPS launched on 12 November 2009 a stress testing exercise with 28 insurance companies which represent some 75% of the market. Preliminary results should be available in February 2010 to inform the political level (EFC).

**Next meeting**

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

A Commission representative announced a tentative schedule for the 15<sup>th</sup> EIOPC meeting being in the week of 31 March 2010.