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**Draft Minutes of the 17th meeting of the
European Insurance and Occupational Pensions Committee**

Brussels, 26 November 2010

Opening and welcome.

The meeting was opened and chaired by Mr Elemér TERTAK, 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 amendments.

2. Minutes of the 16th meeting of the EIOPC held on 30 June 2010

No requests for changes to, or comments on, the draft minutes were raised and the minutes of the 16th meeting of the EIOPC, as tabled by the Commission, were adopted.

3. Solvency II – Recent Developments, Next Steps

i. Omnibus II

A Commission representative updated EIOPC members on the Omnibus II Directive Proposal. The Omnibus II Directive Proposal is intended to deal with the impact of the creation of the EIOPA. It will cover binding technical standards and binding mediation by the EIOPA. So-called transitional measures will also be included. Transitional measures will cover issues such as the equivalence of third countries' solvency regimes, hybrid capital and the discount rate. In addition, the date of entry into force of the Solvency II Framework Directive 2009/138/EC² ('the Solvency II Framework Directive') will be changed to 1 January 2013.

Following comments and questions raised by representatives of several Member States, the Commission representative clarified that the Commission hoped to adopt the Omnibus II Directive Proposal very soon. He also mentioned that the only impact on the EIOPC would be in the area of adopting Level 2 implementing measures, due to the Lisbon Treaty.

ii. Implementing Measures

A Commission representative updated EIOPC members on the Level 2 implementing measures. There had been three meetings of the Solvency Expert Group ('SEG') since the last EIOPC meeting of 30 June 2010 and there will be two other meetings before the next EIOPC meeting of March 2011. Two meetings will be held before the summer break to allow the Level 2 implementing measures to be finalised. At a SEG meeting in October 2010, a consolidated text was discussed. The focus is now on high level and consistency issues.

Given Member States' delays in providing their comments, the Commission Services will not be in a position to send a new version of the consolidated text before the next SEG meeting of 14 December 2010. A new version of the consolidated text should be sent to Member States by mid-January 2011 before a SEG meeting of 2 February 2011. The SEG meeting of 14 December 2010 should focus on resolution of issues previously highlighted by the Commission Services and new issues arising from later comments. These are the application of Level 2 provisions at both solo and group level and the identification of potential transitional provisions. The SEG meeting of 2 February 2011 should consider a new version of the consolidated text in the light of preliminary QIS5 results available at national level.

A representative of one Member States stressed that discussions on transitional provisions should consider QIS5 results.

The Commission representative also explained that discussions concerning the use of a Regulation or a Directive for the Level 2 implementing measures would continue and would

² Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

consider comments already received. However, a Commission representative confirmed that the Level 2 implementing measures will most likely form part of a Regulation.

The use of the legal instrument of a regulation means that the use of *mutatis mutandis* application of the solo requirements to group is not a feasible solution. It is therefore necessary to draft a full legal text.

Representatives of some Member States supported the approach taken by the Commission Services. They welcomed the creation of a sub-group. A few representatives raised concerns that this new piece of work could re-open the compromise on groups reached during the negotiations on the Solvency II Framework Directive. The Commission representative made clear that the purpose of the sub-group is not to change the substance of the text but rather to replace references to '*mutatis mutandis*' by explicit text in order to ensure effective legal provisions for insurance and reinsurance groups.

The Commission representative also informed EIOPC members about the expected process and timetable of the drafting sub-group. More specifically, based on preparatory works by the Commission Services, members of the sub-group are expected to provide for a preliminary draft on specific areas. The drafts will then be discussed and finalized at a drafting session in the second week of January 2011. The final output will be then included in the revised consolidated text which will be discussed at the SEG meeting of 2 February 2011. Member States will receive a description of the mandate of the sub-group, together with a request for volunteers, in the week following the current EIOPC meeting.

iii. QIS5

A Commission representative updated EIOPC members on QIS5. Insurance and reinsurance undertakings had submitted their QIS5 results to supervisors and CEIOPS which were currently analysing them. Preliminary national results would be discussed at the SEG meeting on 2 February 2011. EIOPA would publish the QIS5 report in March 2011.

A representative from CEIOPS announced that according to preliminary results the participation rate in QIS5 was above 66%. EIOPA would provide preliminary QIS5 messages from a European perspective by the beginning of February 2011.

Representatives of some Member States stated that several issues had been identified in QIS5 relating in particular to the complexity of the calculations and the calibration of capital requirements. A Commission representative confirmed that the QIS5 results would be taken into account in the drafting of the implementing measures. Further work was in particular necessary to refine the calibration of capital requirements, to reduce unnecessary complexity, to simplify the calculations and to identify any necessary transitional measures.

A representative of one Member State noted that QIS5 only tested the financial situation of the insurance market at one point in time and suggested that European stress tests should be carried out to obtain more recent information. The representative from CEIOPS stated that at the request of the EFC CEIOPS was currently preparing a European stress test that was planned by the end of March 2011.

iv. Impact Assessment

A Commission representative updated EIOPC members on the recent publication of the consultation paper on the Level 2 implementing measures, as published on 24 November 2010.

This explanation noted that the Commission's proposals for Level 2 implementing measures would be accompanied by a full impact assessment and that the primary purpose of the consultation was to gather input on the wider market impacts that policy decisions on the implementing measures may have. Prior to its adoption, the Solvency II Framework Directive underwent a thorough impact assessment and the purpose of the Level 2 impact assessment is therefore not to revisit the conclusions drawn in relation to Level 1.

The interaction between the consultation paper and the fifth Quantitative Impact Study ('QIS5') was also explained. The purpose of QIS5 was primarily to test the impact of an approach to the quantitative requirements in Solvency II. The aim of the consultation paper is to gather views on the wider market impacts of suggested approaches and to seek views that are of a more qualitative nature. Policy decisions on the implementing measures will be based on both the results from QIS5 and the outcome of the consultation.

An update was also provided on the Deloitte impact assessment study. EIOPC members were thanked for providing comments on the near-final Deloitte report. It was explained that the Commission Services had identified a number of issues with the report and requested that these be resolved prior to acceptance of the work. The Commission Services are satisfied with the way that Deloitte resolved these issues and has now formally accepted the study.

No questions were raised on this update.

v. Solvency II Equivalence

A Commission representative updated EIOPC members on the letter that was sent to CEIOPS setting out the third countries that CEIOPS should assess first for Solvency II equivalence.

It was explained that three countries had been identified Switzerland, Bermuda and Japan (reinsurance only). It was also noted the letter contemplated a transitional regime for other third countries for which Solvency II equivalence is relevant. In this respect, the United States had been specifically mentioned as a primary candidate. The Commission's letter also included several comments on the proposed methodology for assessing equivalence.

An update was also given on the meeting that had taken place between the Commission, CEIOPS and National Association of Insurance Commissioners. It was explained that the purpose of this meeting had been to identify the similarities and differences between Solvency II and the regime in the US (the Risk Based Capital Framework and the Solvency Modernisation Initiative). The meeting had been very constructive and a number of issues had been identified on which the EU and US representatives would further work. A follow-up meeting is planned for March 2011.

A representative from CEIOPS confirmed that the methodology for carrying out the equivalence assessments has now been approved and that work on the assessments for the third countries identified would begin in February.

Two Member States sought clarification on the current status of the Federal Insurance Office ('FIO') that was created following the Dodd-Frank Act. A Commission representative confirmed their understanding that a Director for the FIO would be appointed shortly and that the Office was expected to be staffed with around 14 people.

A representative from one Member State also suggested that the issue of Solvency II equivalence could be a future agenda item for a G20 meeting.

vi. Solvency II – Any Other Business

As a final remark, a Commission representative explained that translations of all implementing measures would require some time. The Commission representative asked the EIOPC members to provide contacts of national insurance experts which could help the Commission's translation service in this respect.

4. Pensions - Green Paper on Pensions and Next Steps and next Steps for the Review of the IORP Directive 2003/41/EC

A Commission representative stated that the consultation period had ended last week. There were more than 1600 responses, of which 18 from Member States' authorities.

The European Parliament is also preparing a response but that will not be available before mid-February 2011. The Parliament splits the responsibility for responding to individual questions in the Green Paper. The ECON Committee is competent exclusively for Question 2 (public finance), Question 5 (cross-border activity for pension funds), Question 10 (solvency rules for pension funds), Question 11 (the Insolvency Directive) and Question 12 (information disclosures). The ECON Committee will share the competence with EMPL Committee on Question 6 (mobility of pensions/workers), Question 7 (portability and tracing), Question 8 (consistency of pension funds regulation), Question 9 (balancing risk, security and affordability) and Question 14 (pension policy governance). The draftsman for the ECON Committee opinion is MEP Cutas (RO, S&D).

The Commission representative informed that a summary of all the responses will be made available. As far as DG MARKT is concerned, the responses will enable to determine the content of the review of the IORP Directive 2003/41/EC³ ('the IORP Directive') scheduled for the end of 2011 following an impact assessment and technical advice from EIOPA. A Public Hearing on the IORP Directive review is planned for the second half of 2011.

The Commission representative also noted that one important point that would need to be addressed in the review of the IORP Directive. It is the definition of cross-border activity. The Commission representative made reference to the CEIOPS issues paper that had been circulated for information and invited for written comments by 14 January 2011. The Chair emphasised that the Commission will also need to develop a proper system of solvency rules for pension funds in the light of risk-based Solvency II in continuation of the Commission's consultation carried out in 2008/2009 and the new input from the Green Paper consultation.

The Single Market is not a main policy instrument to address the pensions challenge, but it can help to reduce the cost of pensions in the Member States. The Single Market can help to realise efficiency gains, i.e. cost savings through larger scale, transaction costs, risk diversification and market innovation. This was also reflected in the Single Market Act proposal of October 2010. Among the 50 proposals, No. 31 concerns pensions seeking to facilitate mobility of capital/services (the IORP Directive review) and remove pension-related obstacles for mobile workers.

No questions were raised on this update.

5. Cross-border Activities of Life Assurance Undertakings

Some life assurance undertakings operate entirely or mainly outside their home Member States. The undertakings often market variable annuities.

The services of the European Commission have received a number of complaints from different Member States alleging that this practice would probably represent a breach of EU law. The Commission's internal investigation did not reveal any concrete evidence of a violation of EU law. However, this matter is important. Therefore, the Commission Services raised this issue at the meeting so as to offer all Member States the possibility to present their views upon the legal arguments presented in a note under ref markt.h.2(2010)840921.

A number of representatives from different Member States pointed out that this internal market issue is indeed very important and invited the EIOPC and the EIOPA to continue to follow it.

³ Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision.

They referred to possible legislative changes of the current Life Assurance Directive 2002/83/EC⁴ ('the Life Assurance Directive') in order to incorporate Recital 12 to become a legally binding provision. They also mentioned applicability of general good rules in the insurance sector and referred to supervisory convergence.

A Commission representative clarified that the issue had arisen under Solvency I. He mentioned that an amendment of the Life Assurance Directive would not be feasible. However, he also pointed out that there would be a number of options how to address it under Solvency II or through the EIOPA.

6. Update on the Revision of the Insurance Mediation Directive 2002/92/EC and State of Play concerning the PRIPs' Initiative

A Commission representative informed the participants about the ongoing work as regards the revision of the Insurance Mediation Directive 2002/92/EC⁵ ('the IMD').

The Commission representative clarified that the main issues of the revision of the IMD are insufficient information and awareness of rights by consumers, conflicts of interest and lack of transparency, inefficiencies in cross-border business and, most importantly, the fact that the IMD rules do not apply to direct sales of insurance products by insurance undertakings. As regards information disclosures, there will be one system for insurance investment-linked products under the Packaged Retail Investment Products ('PRIPs') regime, and another one for non-investment life assurance products. Therefore, there is also a need to align the IMD revision with the ongoing work of the Commission on the PRIPs.

The Commission representative mentioned that the public consultation was opened both for the IMD and PRIPs on 26 November 2010. The responses to the consultations will feed into the preparation of the Commission's proposal for the review of the IMD in late 2011. The deadline for responses is 31 January 2011.

7. Review of the Minimum Amounts Referred to in Article 9(1) of the Motor Insurance Directive 2009/103/EC

A Commission representative informed that the Commission Services had conducted a review according to the Motor Insurance Directive 2009/103/EC⁶ ('the Motor Insurance Directive').

The review concludes that the percentage increase of the consumer price index over the period between May 2005 and May 2010, as calculated in accordance with a Methodology, as agreed at the 16th meeting of the European Insurance and Occupational Pensions Committee on 30 June 2010, was 11,8005595524%. As a consequence, the amounts laid down in Article 9(1) of the Motor Insurance Directive are increased from EUR 1.000.000 to EUR 1.120.000, from EUR 5.000.000 to EUR 5.600.000 and from EUR 1.000.000 to EUR 1.120.000 respectively.

The review only concerns Member States without transition.

Following a question by a representative of one Member State, the Commission representative explained that, in accordance with the standard approach to implementation, as adopted by the

⁴ Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance.

⁵ Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation.

⁶ Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability.

EIOPC on 30 June 2010, the revised amounts should be implemented by the Member States under national law with an effective date for application before 1 January 2012.

The Commission will inform the European Parliament and the Council of the review and the adapted amounts. The Commission will also publish the adapted amounts in the Official Journal.

8. Annual Review of the Amount of the Minimum Guarantee Fund (life and non-life) and the Premium and Claims Indices (non-life) under the Life Assurance Directive 2002/83/EC and Solvency I Directive 2002/13/EC

A Commission representative informed that the Commission Services had conducted a review according to the Life Assurance Directive and the Solvency I Directive 2002/13/EC⁷ ('the Solvency I Directive'). The review concludes that the percentage increase of the consumer price index over the period between March 2008 and March 2010, as calculated in accordance with a Methodology, as agreed at the 36th meeting of the Insurance Committee held on 1st December 2004, was 3.30%, thus, less than 5%.

As a consequence, no changes are required as regards the minimum guarantee fund (life and non-life) and the premium and claims indices (non-life) under Article 30 of the Life Assurance Directive and Article 1(3) of the Solvency I Directive.

No questions were raised on this update.

9. Any Other Business

i. Natural Catastrophes

Commission representatives mentioned that on 10 March 2010 Commissioner Barnier had announced that the Commission 'would carry out an in-depth examination of insurance schemes covering national catastrophes, in particular flooding.'

The Commission will therefore hold in 2011 a conference which will cover issues such as (i) size of damages caused by natural catastrophes and the extent to which they are covered by insurance, (ii) reasons that limit effective insurance protection of consumers against natural catastrophes and also possible solutions offered by public authorities.

No questions were raised on this update.

ii. Case C-236/09, *Test Achats*

A Commission representative explained that Advocate General Kokott had maintained in her Opinion in Case C-236/09, *Test Achats* of 30 September 2010 that Article 5(2) of the Gender Directive 2004/113/EC⁸ which had introduced so-called opt-out clause for insurance and related financial services, should be invalidated.

In addition, the Advocate General Kokott proposed that the effects of the invalidated Article 5(2) would be maintained until the expiry of a period of three years following the delivery of the judgment in Case C-236/09, *Test Achats*. That would not apply to persons who, prior to the date of delivery of the judgment of the Court, have initiated legal proceedings or raised an equivalent claim under the applicable national law.

No questions were raised on this update.

⁷ Directive 2002/13/EC of the European Parliament and of the Council of 5 March 2002 amending Council Directive 73/239/EEC as regards the solvency margin requirements for non-life insurance undertakings.

⁸ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

iii. Sanctions against Iran

A Commission representative explained the scope of Article 26 of Council Regulation 961/2010⁹ on sanctions against Iran since it covers particular rules for insurance and re-insurance.

No questions were raised on this update.

Next meeting

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

The Chairman announced a tentative schedule for the 18th EIOPC meeting being in the week of 8 March 2011.

⁹ Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007.