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**Draft Minutes of the 18th meeting of the
European Insurance and Occupational Pensions Committee**

Brussels, 8 March 2011

Opening and welcome.

The meeting was opened and chaired for the first half by Mr Elemér TERTAK, Director of the Financial Institutions Directorate in the Internal Market and Services Directorate-General of the European Commission and for the second half 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 17th meeting of the EIOPC held on 26 November 2010

No requests for changes to, or comments on, the draft minutes were raised and the minutes of the 17th 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 Commission representative explained timelines - the vote in the EP's ECON Committee is foreseen to take place in July, the trilogue in September and the final vote in the beginning of November 2011. A representative of the Hungarian Presidency confirmed the timelines and that the Council's working group had made a good progress.

In replying to questions, raised by representatives of five Member States, a Commission representative confirmed that the date of entry into force of the Solvency II Framework Directive 2009/138/EC² (the Solvency II Framework Directive') will stay at 1 January 2013 and will not be changed. The Commission representative pointed out that since the Solvency II Framework Directive was adopted in 2009, Member States should have already started to align their legal and administrative measures with the Directive. The Commission representative also mentioned that the implementing measures will be in the form of regulations having direct application. The Chair then stated that transitional measures would be discussed at the Solvency Expert Group ('SEG') meeting on 30 March 2011 - it has been agreed that the transitional measures would include provisions on the discount rate, equivalence, and hybrid capital. The Chair subsequently invited EIOPC members to propose other areas for transitional measures, based on results of QIS 5. The Chair pointed out that only transitional measures which are strictly necessary should be introduced. The transitional measures would not be subject to Member State discretion and would be applied directly by insurance companies. The Chair also emphasized that more than 3,500 companies had taken part in QIS 5 and through their participation in QIS5 they had tested their preparedness for Solvency II. Finally, the Chair mentioned that the draft implementing measures would be ready and known by Q3 2011.

ii. QIS 5

A representative of EIOPA gave a presentation on the preliminary result of QIS 5. The presentation was distributed after the meeting.

iii. Implementing Measures

A Commission representative updated EIOPC members on the Level 2 implementing measures. The second consolidated version of the implementing measures was sent for comments due by the beginning of April 2011.

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).

There will still be two meetings of the SEG on 30 March 2011 (issues to be discussed - calibration, long-term guarantees, group issues, certification, reduction of administrative burden and transitional arrangements) and in the first week of May 2011 (to deal with outstanding issues). As a final remark, the Commission representative explained that translations of all implementing measures would require some time.

In replying to questions raised by representatives of two Member States, the representative of EIOPA confirmed that March 2012 was an initial deadline for the non-binding guidelines. It was also mentioned that the issue of the riskiness of government bonds had not been dealt with by EIOPA. The representative of EIOPA also referred to the ongoing work on the catastrophe risk sub module. The Commission representative then explained that the deadline for the binding technical standards included in the Omnibus II proposal may be postponed.

iv. Impact Assessment

A Commission representative updated EIOPC members on the Impact Assessment. The Commission representative recalled that the consultation paper on the Level 2 implementing measures had been published on 24 November 2010.³ The consultation closed on 26 January 2011. 68 responses from industry, public authorities and associations representing policy holders and consumers were received. The summary of responses will be soon published on the website.

The final Impact Assessment will be submitted to the Commission's Impact Assessment Board in mid July 2011. The final Impact Assessment will be based on the responses to the consultation paper, the Deloitte impact assessment study, the QIS 5 results, and the input of the original CEIOPS advice. In replying to a question raised by a representative of one Member State, the Commission representative assured EIOPC members that supervisory reporting and public disclosure as well as implementation and social costs would be reflected in the Impact Assessment.

v. Solvency II Equivalence

A Commission representative updated EIOPC members on the latest developments relating to Solvency II equivalence. The Commission asked CEIOPS in a letter sent in October 2010 to carry out equivalence assessments on Switzerland, Bermuda and Japan (reinsurance only). The Commission representative noted that the letter also 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. Recently, US National Association of Insurance Commissioners agreed to deliver a list of areas progressing in the direction of the Solvency II.

The Chair confirmed in his reply to a question by a representative of one Member State that the list of potential third countries is based on information sent by Member States. The Chair also pointed out that a number of EU insurance groups operate outside the European Union and that relatively few insurance groups based in third countries operate in the European Union.

4. Pensions (Green Paper on Pensions and Review of the IORP Directive 2003/41/EC)

A Commission representative updated EIOPC members on the Green Paper on Pensions and the review of the IORP Directive 2003/41/EC⁴ (the IORP Directive'). The Commission representative mentioned that the European Parliament had adopted its Report on 16 February 2011 and that the Commission Services had posted the summary of the responses on its website on 7 March 2011. The main follow-up as far as DG MARKT is concerned is the review of the

³ http://ec.europa.eu/internal_market/consultations/2010/solvency-2_en.htm

⁴ 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.

IORP Directive. In this respect, the Commission representative mentioned that the main messages from the consultation were the following:

First, pensions are not only a challenge for economic and social policy, but also an important issue for the Single Market ('SM'). The SM is not a main policy instrument to address the demographic challenge. But it can help to reduce the cost of pensions by facilitating mobility of capital, services and mobile workers.

Second, the three pension pillars are important. Retirement income should be diversified. The SM has to ensure adequate regulation of occupational schemes. In particular, occupational schemes building on solidarity and collectivism allow risk-sharing; they hence reduce the cost of financing. The impact assessment for the IORP Directive review will need to clearly identify the impact of our proposals on the supply and the cost of occupational pension schemes.

Third, many respondents were in favour of reviewing the IORP Directive in order to clarify legal uncertainties related to cross-border activity; they also offered suggestions for how this could be done.

Fourth, most respondents were supportive to introduce risk-based supervision also for pension funds. But this does not mean that we can consider that Solvency II should be applied to pension funds. Instead, introducing risk-based supervision for pension funds appears to refer to two key aspects: (i) quantitative elements that take a substance over form approach to determine the nature and duration of the pension liability, and whether the pension liability is borne by the sponsor or by the pension fund itself. If the IORP itself carries liabilities it should continue to hold own funds, but risk-reducing mechanisms have to be reflected: e.g. call on contributions, cut pension rights, conditional indexation, contingent assets, reinsurance in a pension guarantee system; (ii) qualitative elements: the need for better governance, risk management and transparency. Solvency II could be taken as a starting point to achieve this.

Fifth, respondents stressed the need for clear and comparable information to member and beneficiaries. The Commission will therefore also seek to modernize the minimum disclosure requirements in the IORP Directive.

As far as the next steps are concerned, the Commission representative mentioned that there are three parallel work streams:

1. A White Paper on pensions is foreseen for Q3 2011, but the specific topics are not known yet.
2. In the Annual Growth Survey the Commission issued clear messages for guidance of Member States on pension reforms: raise the retirement age and link it to longevity growth; reduce early retirement and raise incentives to employ older workers; promote supplementary private savings to enhance retirement incomes; and beware of the impact of pension spending on the long term sustainability and adequacy of public finances. These key messages will be followed-up bilaterally with MS through the National Reform Programmes.
3. DG MARKT will pursue the revision of IORP Directive to table a proposal by end of 2011. A Call for Advice to EIOPA is scheduled by the end of March 2011. A draft of that Call will be circulated to the EIOPC for a written procedure before 18 March 2011. A Public Hearing on the IORP Directive review is foreseen for 22 September 2011 in Brussels.

Finally, the Commission representative mentioned that the obligation for the Commission to report every two years on the need to harmonise technical provisions (Article 15(6) of the IORP Directive) will be taken up in the Call for Advice.

A representative from one Member State asked for information about the coverage of occupational pension schemes. A Commission representative suggested that available information would be circulated to the EIOPC. A representative from another Member State underlined that pension funds (not subject to Solvency II) could offer occupational retirement provision in Member States where only insurance companies offer occupational pensions. This distorts competition. This representative called on the Commission to be ambitious in its proposal to review the IORP Directive. The aim should be to attain an equivalent level of protection of pension savers, irrespective of the financial institution providing the occupational retirement income. A representative from EIOPA expressed concern that the Commission's timetable to ask for EIOPA's advice is very ambitious. A representative from a third Member State asked how much time EIOPA would have to respond to the Call for Advice, but a Commission representative mentioned that this had not yet been agreed with EIOPA. A representative from a fourth Member State underlined that in its follow-up the Commission should be very careful to duly take into account the diversity in the EU as regards pension provision. A high degree of pension security can be delivered in a number of different ways.

5. Article 5(2) of the Motor Insurance Directive 2009/103/EC

Article 5(2) of the Motor Insurance Directive 2009/103/EC⁵ ('the Motor Insurance Directive') allows the Member States to exempt certain types of vehicle or certain vehicles having a special plate from the obligation to have all vehicles in its territory covered by compulsory third party liability insurance.

A Commission representative presented the results of the replies to the questionnaire sent to the Member States. Based on these findings, it was suggested to maintain the current provision, after which the Member States were asked as to whether they wished to maintain or repeal the provision. The Commission Services asked a number of questions about the implementation and practical application of the said paragraph in the EEA Member States in this regard in 2010.

No comments were raised by the Member States.

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

A Commission representative updated EIOPC members on the ongoing work as regards the revision of the Insurance Mediation Directive 2002/92/EC⁶ ('the IMD').

The Commission organised a public hearing in December 2010 where clear messages were heard and will be taken into account for the draft. There was a preference among panellists for a classical directive and a need for more legal certainty. It was concluded that the legal certainty must be improved in terms of definitions and personal scope. It was made clear that proportionality and SME's interest should be considered. It was suggested that the conflict of interest and transparency must be tackled. Also, the level-playing field must be ensured and direct writers must come under the IMD. Finally, a one size fits all approach is not appropriate for the IMD review. This means that there should be differences between non-life insurance and investment linked life insurance products. The summary of this public hearing has been published on the Commission's website.⁷

The Commission representative also mentioned that the public consultation for the IMD was closed on 28 February 2011. Some 120 replies to the consultation have been received. An Expert Group on the IMD review will be convened on 11 April 2011.

⁵ 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.

⁶ Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation.

⁷ http://ec.europa.eu/internal_market/insurance/mediation_en.htm

In replying to questions of one Member State, the Chair confirmed that the intention is to include a chapter within the IMD on the selling practices for PRIPS. He would also favour the reviewed IMD as a Lamfalussy Directive.

7. Update on the Insurance Guarantee Schemes

The Chair updated EIOPC members on the ongoing work as regards a Proposal Directive on the Insurance Guarantee Schemes.

The Chair recalled that the White Paper on Insurance Guarantee Schemes had been published on 12 July 2010.⁸ The consultation closed on 30 November 2010. 64 responses by industry, public authorities and associations representing policy-holders and consumers were received. The summary of responses was published on 16 February 2011 on the website.

The public hearing on the Insurance Guarantee Schemes is planned for 4 July 2011 in Brussels.

No questions were raised on this update.

8. Any Other Business

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

The Chair updated EIOPC members on the decision of the Court of Justice in Case C-236/09, *Test Achats*. The Court of Justice decided that with effect from 21 December 2012, Article 5(2) of Council Directive 2004/113/EC⁹ ('the Gender Directive') is invalid.

Article 5(2) of the Gender Directive reads as follows "[n]otwithstanding paragraph 1, Member States may decide before 21 December 2007 to permit proportionate differences in individuals' premiums and benefits where the use of sex is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data. The Member States concerned shall inform the Commission and ensure that accurate data relevant to the use of sex as a determining actuarial factor are compiled, published and regularly updated. These Member States shall review their decision five years after 21 December 2007, taking into account the Commission report referred to in Article 16, and shall forward the results of this review to the Commission."

As a consequence, as of 21 December 2012, insurers will have to guarantee unisex premiums and benefits. A Commission representative explained the judgement concerns insurances concluded after 20 December 2012. The Commission representative also explained that, according to Article 16 of the Gender Directive, the Commission would adopt a report on the application of Article 5 in Q3 or 4 2011.

In answering to a question by a representative from one Member State, the Chair mentioned that at first sight the Solvency II Framework Directive would need not to be adapted. A representative of another Member State suggested it would be useful if Member States which currently apply unisex premiums and benefits shared their experience with other Member States. Another representative referred to an issue of retroactivity and impacts on the annuities' market. The Chair then invited EIOPC members to comment on the potential impacts of the judgement on insurance and also possible steps that could be taken and to send their views to the Commission Services.

ii. Council Regulation 961/2010 on Sanctions against Iran

A Commission representative invited EIOPC members to send to DG MARKT any request concerning the scope of Article 26 of Council Regulation 961/2010.¹⁰ The requests would be

⁸ http://ec.europa.eu/internal_market/insurance/guarantee_en.htm

⁹ 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.

shared with the European Commission's Service for Foreign Policy Instruments being in charge of the measure in question.

Next meeting

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

The Chairman announced a tentative schedule for the 19th EIOPC meeting being in the week of 29 June 2011. Subsequently, the meeting has been re-scheduled for 14 July 2011.

¹⁰ Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007.