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**Draft Minutes of the 19th meeting of the
European Insurance and Occupational Pensions Committee**

Brussels, 14 July 2011

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 18th meeting of the EIOPC held on 8 March 2011

No requests for changes to, or comments on, the draft minutes were raised and the minutes of the 18th meeting of the EIOPC, as tabled by the Commission, were adopted.

3. Solvency II – Recent Developments, Next Steps

i. Omnibus II

Representatives of the Polish Presidency and of the secretariat of the European Parliament's ECON Committee updated EIOPC members on general timelines and planning in the Council and the European Parliament's ECON Committee. It was mentioned that the Rapporteur Mr Balz had tabled close to 300 amendments/200 pages in July 2011.

A representative from a Member State asked about the date of entry into force of the Solvency II Framework Directive 2009/138/EC² ('the Solvency II Framework Directive'). He mentioned that utmost certainty and clarity was needed in this respect. The Chair explained that, as a result of the current Omnibus II discussions, the Solvency II Framework Directive will have to be transposed by Member States by 1 January 2013 with a transition throughout 2013 towards the full application of the Solvency II Framework Directive on 1 January 2014.

A representative from EIOPA mentioned that a stable legislative ground was needed for the work of EIOPA as well as for the insurance industry. He made clear that the implementation of the Solvency II Framework Directive should lead to the same protection of insurance policyholders in the EU. He also pointed out that a smooth transition towards the Solvency II regime would have to be assured.

ii. Level 2 Measures

The Chair summarised the ongoing work as regards the Level 2 implementing measures (such as contract boundaries, natural catastrophe risks). He said that during the summer break the consolidated version of the texts would be prepared. The texts would still need to be discussed with the Commission's Legal Service and would need to be translated. The Level 2 measures will cover some 400 pages.

The Chair also told EIOPC members that the Commission's translation service would appreciate their technical input as regards the draft translations.

A representative from a Member State asked about the future role of EIOPC. A representative from another Member State enquired as to whether a new draft text on contract boundaries would be circulated. Another representative referred to other major items discussed at a meeting of the Solvency II Expert Working Group of 22 June 2011 and wondered whether they would also be subject to possible comments. A representative from another Member State said it would be reasonable to discuss the comments raised by different stakeholders as regards the draft Level 2 measures at the next meeting of EIOPC in November 2011.

The Chair made clear that the discussions in the Solvency Expert Group were now finalised and that there were no intentions to re-start these discussions in the EIOPC. He also announced that following the June meeting of the Solvency II Expert Working Group, there would be further

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).

written consultation, in the course of July and later in September. This will also cover a new compromise text on contract boundaries and some other items. The Chair confirmed that it would be a good idea to discuss the comments from Member States and stakeholders in terms of possible inconsistencies of the draft Level 2 measures at the next meeting of EIOPC in November 2011.

The representative from EIOPA confirmed that EIOPA would also submit its written comments. He also referred to the Commission's informal request for further input to the impact assessment work, but noted that this was contingent on EIOPA's resources. A Commission representative welcomed EIOPA's preparedness to provide this further input. She mentioned that the Impact Assessment that will accompany the Commission's proposal for the Level 2 measures will need to quantify the changes made to the level 2 approach since QIS 5. The 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.

A representative from a Member State inquired as to whether it would be possible to have a clear timetable *vis-à-vis* pending legislative work. The Chair replied that the Commission Services would provide EIOPC members with a projected timetable. He pointed out, however, that there are a number of uncertainties.

A representative from a Member State raised a question about the legal form of the Level 2 implementing measures. A representative from another Member State referred to the need for a smooth transition from the Solvency I to the Solvency II regime. Another representative asked the Chair if Member States could still send their comments on issues which have already been discussed. The Chair clarified that the Level 2 implementing measures would take the form of one or more Regulations. He, therefore, urged Member States to proceed with the transposition of the Solvency II Framework Directive into their national laws and regulations. He said that the parallel running of the Solvency I and Solvency II regimes should be avoided. The Chair also invited EIOPC members to send further comments they deem necessary and important.

iii. Solvency II Equivalence

A Commission representative updated EIOPC members on the latest developments relating to Solvency II equivalence. EIOPA is currently carrying out equivalence assessments on Switzerland, Bermuda and Japan (reinsurance only) and has recently completed the onsite visits for these three third countries. It will now finalise its report, which will be shared with the relevant third countries before being published for public consultation. The deadline for EIOPA's advice is end September 2011. The Commission representative noted that once this work has been concluded, work would begin on determining convergence programmes for third countries included in the transitional regime. The Commission has so far identified a list of 15 candidates and will be shortly approaching those third countries to gauge their interest in being part of a transitional regime. Finally, the Commission representative provided an update on the financial markets regulatory dialogue which had recently taken place with the US.

The representative from EIOPA clarified that the public consultation would be launched on 2 August 2011. It was also clarified that EIOPA would need to revisit its advice once the Level 2 implementing measures are finalised to confirm that nothing has changed.

A representative from a Member State queried the situation in relation to the US. The Chair explained that the US has a Solvency Modernisation Initiative which will make changes to their regime. He also made clear that the obligation of EU reinsurers to deposit reinsurance collateral the US must accept to remove.

4. Update on the Review of the IORP Directive 2003/41/EC

A Commission representative recalled that the consultation under the Green Paper on pensions ended in March 2011. The two main follow-up work streams operating in parallel are (i) the

forthcoming White Paper on pensions and (ii) the review of Directive 2003/41/EC³ ('the IORP Directive').

The White Paper is due in November 2011 with a view to taking into account the country-specific recommendations from the macroeconomic dialogue (European Semester). The Commission's proposal for the IORP Directive review is scheduled for the third quarter of 2011 as a strategic initiative. The Green Paper consultation underlined that the Single Market supports pension adequacy and sustainability through efficiency gains and safety. Accordingly, the objectives of the IORP Directive review are to 1) facilitate cross-border activity through the simplification of the legal, regulatory and administrative environment and 2) introduce risk-based supervision, drawing on the Solvency II Framework Directive. The Commission representative recalled that, following a written procedure with the EIOPC, the Commission Services had sent the Call for Advice from EIOPA on 7 April 2011. Draft EIOPA advice on several topics will be discussed at the forthcoming meeting of the Occupational Pensions Stakeholder Group. A Public Hearing on the review of the IORP Directive is scheduled for 1 March 2012 in Brussels.

The representative from EIOPA informed that the Occupational Pensions Committee has set up four work streams to prepare the EIOPA advice. EIOPA had released on 8 July 2011 its draft advice for consultation for 9 of the 23 subjects contained in the Call for Advice. The consultation ends on 15 August 2011. The subjects out for consultation are: scope of the directive, cross-border activity, prudential regulation (as opposed to social and labour law) and governance. The remaining parts of EIOPA's consultation are due for October 2011. The representative from EIOPA also informed that EIOPA had not yet had the chance to work on the quantitative impact of its advice, but that a solution will be found.

A representative from a Member State asked for a clarification on the timing of the White Paper on Pensions and on its content. The Commission representative clarified the timing issue, but mentioned that it is not yet possible to inform about the content of the White Paper.

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

The Chair updated EIOPC members on the ongoing work as regards the revision of the Insurance Mediation Directive 2002/92/EC⁴ ('the IMD').

A public consultation was carried out by the Commission services from 26 November 2010 till 28 February 2011. 125 contributions were received. The public consultation results support largely the proposal of the Commission to revise the IMD. The Impact Assessment work is ongoing, and is to be finished in early October 2011. The Directive Proposal could be tabled for adoption in the first quarter of 2012 as part of a 'retail package' (this package is also planned to include the PRIPs proposals on product disclosures and UCITS V). The Chair also added that the second Expert Group meeting with Member States would likely take place in Q4 of 2011.

The Chair clarified that the new IMD would continue to have the features of a "minimum harmonisation" legal instrument. However, those minimum standards will be raised significantly, in particular, in the chapter regulating the distribution of life insurance policies with investment elements. Therefore, the chapter will be referring to some Level 2 work in order to align the rules with the Markets in Financial Instruments Directive 2004/39/EC ('the MiFID')⁵. This means that the consumer will benefit from an equal level of protection when buying similar products since

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.

⁴ Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation.

⁵ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC

the provisions of the revised IMD on the selling of insurance products with investment elements will reflect the MIFID rules.

In replying to clarification requests raised by several representatives from different Member States the Chair specified the differences of pending initiatives:

- The IMD regulates the selling practices of all insurance products, including those which contain investment elements.
- The PRIPs initiative aims at ensuring a more coherent and horizontal approach to key parts of the regulation of retail investment products across different sectors. The PRIPs initiative has two strands – one is the product disclosure, which is taken care of by the proposed PRIPs regulation (setting out detailed responsibilities on product manufacturers to prepare standardised and comparable information sheets about their products), and the other one is selling practices, which is part of the revisions of the IMD and the MiFID.
- The MiFID regulates the selling practices of investment products and has been considered as a benchmark for the revision of the IMD with regards to the selling practices of life assurance policies with investment elements. The MiFID itself is currently under review and revision; proposals for refinements to the MiFID level 1 are scheduled to be adopted by the Commission in October 2011.
- The Solvency II Framework Directive includes rules on product disclosure related to all insurance products. The Directive does not deal with sales practices and consumer protection rules.

In replying to a question raised by a representative from a Member State, the Chair confirmed that the Insurance and Pensions Unit in the Internal Market and Services Directorate-General of the European Commission is a unit responsible for the review of the IMD. He also added that the Financial Stability Unit in the same Directorate-General is in charge of the Insurance Guarantee Schemes' file.

A representative from a Member State welcomed the consistency in the Commission's approach. He wondered as to whether more information concerning the non-insurance related files could be delivered. The Chair proposed the next meeting of EIOPC in this respect.

The representative from EIOPA pointed out that the main concern is the protection of policy-holders. He said that the approach by the Commission seemed sensible and that sectoral specificities should be considered.

6. Follow-up of the *Test-Achats* Judgment (Case C-236/09)

A Commission representative updated EIOPC members on the follow-up of the decision of the Court of Justice in Case C-236/09, *Test Achats*. As a consequence, as of 21 December 2012, insurers will have to guarantee unisex premiums and benefits.

The Commission representative mentioned that the Commission was aware of the legal issues raised by the Court's ruling. The Commission has concluded that amending the Gender Directive 2004/113/EC⁶ may have unintended legal and practical consequences and should therefore not be pursued. The Commission will publish detailed guidance (Communication) before the end of 2011. The Chair then updated EIOPC members on the conclusions of the meeting of the Forum on the implementation of Article 5 of Directive 2004/113/EC which took place on 20 June 2011. He said that the Court ruling did not have a retroactive effect. He also told EIOPC members that the Commission would monitor the situation after 21 December 2012.

Several representatives from different Member States referred to a need to assure the legal certainty. They also said that clarity as to whether (tacit) renewals would fall outside the judgment would be needed. The representative from EIOPA supported the idea of the

⁶ 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.

Communication. He also said that the insurance industry needed to differentiate based on age and take into account disability risks.

7. Any Other Business

i. Update on the Insurance Guarantee Schemes

The Chair indicated that the file had been transferred to the Financial Stability Unit in the Internal Market and Services Directorate-General of the European Commission. The Proposal was postponed until 2012.

ii. Conference on Natural Catastrophes

The Chair informed EIOPC members that the Commission would organise a conference 'Prevention and Insurance of Natural Catastrophes' on 18 October 2011 in Brussels.⁷

iii. Rules of Procedure

Due to changes, as introduced by the Lisbon Treaty, new Rules of Procedure for the European Insurance and Occupational Committee will be prepared for a possible adoption.

Next meeting

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

The Chairman announced a tentative schedule for the 20th EIOPC meeting being in the week of 24 November 2011.

⁷ http://ec.europa.eu/internal_market/insurance/natural-catastrophes_en.htm