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MINUTES OF THE SECOND INFORMAL STAKEHOLDER MEETING ON INSURANCE GUARANTEE SCHEMES (IGS) ON 11 JUNE 2009, BRUSSELS

The meeting was attended by representatives of CEA, AMICE, CEIOPS, FINUSE, the Joint Research Centre (JRC) and the Bundesverband Deutscher Banken (BdB). CEIOPS underlined the preliminary nature of its views as the decisions of the Members Meeting would still be outstanding.

The Commission Services explained that its thinking had evolved since the last informal stakeholder meeting on 8 May 2009. The Commission Services are considering the option to introduce national schemes in all Member States supplemented by the requirement of mutual support which is also discussed in the banking sector. A high level of harmonisation seems necessary to ensure an appropriate level of consumer protection and level playing field for the industry. Moreover guarantee schemes for pensions should not be covered by the White Paper on IGS.

The CEA underlined that insurance is not banking. Its members would be against mutual support solutions the main reason being moral hazard. The DGS would have been overburdened by the current crisis with or without mutual support. The BdB pointed out that EFDI members would be reluctant with regard to the pan-EU solutions such as the 28th regime. The main driver for pan-EU solutions in the banking sector would be financial stability concerns which would be far less relevant for the insurance solutions which are mainly driven by consumer protection. For the insurance sector pan-EU solutions therefore seem less suitable. The BdB suggested that, should mutual support be introduced, its cover could be restricted to a minimum level of protection at EU level. The CEA had concerns whether this might not be difficult for consumers to understand.

I. Discussion of the policy issues and options

As some participants asked for more time to discuss the new considerations the discussion took place on the basis that national schemes would be introduced in 27 Member States without European funding arrangements such as mutual support.

The participants were invited to express their views on which design features should be harmonised at European level, and if so, how (apart from the geographic scope and policies covered).

- A. Ownership, management and administration;
- B. Nature of scheme intervention;
- C. Eligible claimants;
- D. Compensation limits and other reductions in benefits;
- E. Funding;
- F. Advertising and information requirements.

A. Ownership, management and administration:

All participants were against harmonising ownership, management and administrative arrangements as this would not be necessary to ensure a well functioning solution for IGS at European level.

B. Nature of scheme intervention;

All participants were of the view that the nature of intervention should not be harmonised at European level due to differences between lines of business as well as differences in contract law and winding-up law.

C. Eligible claimants;

All participants were of the view that the eligible claimants should be harmonised at European level.

1. Who should be protected?

CEIOPS explained that it is currently discussing to cover natural persons only or natural persons plus SMEs. FINUSE was in favour of protecting natural persons and SMEs. FINUSE acknowledged however that it would be difficult to define SMEs. CEA was in favour of protecting natural persons only as the main objective of IGS is consumer protection and not company protection. The BdB was also in favour of protecting natural persons only and pointed out that even though there would be a definition of SMEs in the DGS Directive this has led to practical problems. The BdB suggested that Member States should be given the possibility to introduce additional cover for SMEs at national level.

2. Should exclusions apply to individuals responsible for, or connected to, the failing undertaking?

All participants concluded that it would be rather difficult to exclude individuals responsible for, or connected to, the failing undertaking.

D. Compensation limits and other reductions in benefits

1. The Commission Services explained the options on how IGS payments could be limited:

- (a) restricting coverage to certain types of claims against the insurer or to certain types of loss incurred (eg, cover outstanding claims but not prepaid premiums);
- (b) capping the maximum amount of compensation;
- (c) compensating less than 100% of the claims; or
- (d) imposing a deductible on payments or setting a minimum floor for a claim to be eligible.

All participants were of the view that any European legislation should provide for the possibility to introduce certain compensation limits and other reductions in benefits. It should be left to Member States to decide on concrete compensation limits and other reductions in benefits.

The CEA was of the view that points (b), (c) and (d) should be provided for at EU level. FINUSE was in favour of allowing Member States to introduce reductions in benefits in accordance with points (b) and (c). The BdB pointed out that due to the administrative burden a de-minimis clause in accordance with point (d) would be very useful. Although coinsurance had proven difficult for the banking sector, it might well be a solution for the insurance sector.

2. The Commission Services asked whether these limits should apply to customers or policies.

On this issue only FINSUE expressed a view in favour of per policy coverage.

H. Funding

The participants were invited to express their views on whether and how funding (ex-post vs. ex-ante funding) could be harmonised.

CEA, BdB and AMICE were not in favour of harmonising funding rules at EU level. The CEA added that the industry would see no merits in ex-ante funding. CEIOPS explained that there would be some merits in harmonising funding. CEIOPS would be reluctant to decide for full ex-ante funding as there is usually more time in insurance than in banking.

I. Advertising and information requirements

All participants were of the view that advertising with IGS design features should be forbidden and requirements on pre- and post-contractual information be harmonised at EU level.

III. Discussion of the Impact Assessment (IA) methodology for the White Paper

The discussion took place on the basis of a document circulated before the meeting setting out the suggested IA methodology for the IA for the White Paper.

The CEA raised a number of high level and technical comments:

- The probability of default (PD) under Solvency II will be much lower than 0.5 %. It is not expected that 1 of 200 insurers will get insolvent in each year. This is due to:
 - the SCR is a minimum requirement: undertakings will hold available capital above this level which is assumed to be consistent with a BBB-rating (coverage ratio > 100 %); i. e. the probability of insolvency will be much lower than 0.5 % and before an insurance undertaking defaults all its available own funds (not only the SCR or eligible own funds!) have to be exhausted;
 - groups will hold capital above their group SCR because the group support regime will be not in place;
 - the SCR is calibrated as fluctuations of basic own funds and not of all available own funds, i. e. 1) ancillary own funds are not taken into account and 2) tier limits do apply (own funds capped by the limits will be loss-absorbent even if they are not allowed to cover the SCR);
 - the supervisory ladder of intervention: breaching the SCR will result in escalating measure of supervisors to avoid breaching the MCR and insolvency; breaching SCR or even MCR is not the same as insolvency;
 - Pillar II requirements; and
 - other risk mitigation techniques, e. g. reinsurance above 1 in 200 years events.
- The methodology assumes that failed undertakings need to be refunded up to the level of the SCR whereas technical provisions would be more suitable. Furthermore, there may not be a need to re-build all parts of the technical

provisions, and so this should be an upper limit (for example, it may not be appropriate to protect the premium reserve component of the technical provisions for non-life business).

- The methodology does not take into account compensation limits and other reductions in benefits.
- Using QIS4 data would seem problematic, because QIS5 will significantly change the calculations and the final level II implementing measures are expected to differ as well. As QIS4 did not rely on the final adopted Solvency II level I text the technical specifications weren't in line with them.
- There are some doubts about the empirical or theoretical evidence that modelling losses of insolvent insurance undertakings using Vasicek's portfolio model would be justified.

CEIOPS and FINUSE raised concerns about the reliability of a model to assess the impact of the policy options.

The Commission Services explained that the figures will of course have to be carefully assessed. It pointed out that:

- Alternative analyses will be computed for various levels of the PDs, also using ratings' implied PDs for major European insurers.
- The need to recapitalise up to the level of SCR would only be a preliminary view. The Commission Services will consider whether it may not be more suitable to recapitalize up the level of technical provisions.
- QIS4 would be the most comprehensive data available. Some updating and refinement of this data is envisaged for the future.
- The Vasicek's portfolio model would be assessed using alternative computational tools such as binomial ones. The Commission Services are convinced of its reliability once results have been adjusted to take into account that markets where insurance undertakings operate are in many cases highly concentrated.

The Commission Services also drew the participants' attention to the importance of a correct calibration of two key parameters: the loss given default and the correlation coefficient. Any input from stakeholders helping in this calibration would be highly appreciated. It welcomed any other suggestions to address the issues and offered to discuss the comments with stakeholders in more detail after the meeting.

IV. Next steps

The Commission Services explained that any written comments both on the IA methodology and the policy options should be sent by the end of June 2009.