



MARKT/2538/03-EN

Orig.

21 November 2003

Newsletter

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1. Pension Funds Directive

On 13 May 2003, the Council (ECOFIN) approved European Parliament's amendments and adopted the Directive. Pension Funds Directive [2003/41/EC](#) entered into force on 23 September 2003, the day of its publication in the Official Journal of the EC, with a transposition period of 24 months for Member States.

2. Implementation of insurance directives

Two cases are now pending before the Court against *Luxembourg* (C-273/2003) and *Ireland* (C-274/2003) in relation to the late implementation of the 4th Motor Insurance Directive ([2000/26/EC](#)) that aims to facilitate and speed up the settling of claims when the accident takes place outside the victim's Member State of residence.

The Commission has sent reasoned opinions to Belgium, Germany, Greece, France, Luxembourg, the Netherlands, Finland, Spain, Sweden and the UK asking them to implement quickly the Winding-up Directive [2001/17/EC](#) designed principally to guarantee consumer protection when insurance companies are wound up. The Commission has not been notified of the adoption of national measures necessary to put the Directive into effect, although the deadline set by the European Parliament and the Council when they adopted the Directive expired on 20 April 2003.

Directives [2002/12/EC](#) (solvency life, repealed by [2002/83/EC](#)) and [2002/13/EC](#) (solvency non-life) had to be transposed before 20 September 2003. Legal pressure under Article 226 of the EC Treaty will start immediately.

As for the technical assistance offered to Member States in relation to the implementation of the insurance mediation Directive [2002/92/EC](#), a meeting at which any issues to which transposition may give rise can be discussed could be organised before summer 2004.

3. Motor insurance

Commission Decision [2003/564/EC](#) of 28 July 2003 on the application of Council Directive [72/166/EEC](#) (First Motor Insurance Directive) was published in the Official Journal L192 on 31 July 2003.

This Commission Decision refers to the entry into force of the new "*Agreement between the National Insurer's Bureaux of the Member States of the European Economic Area and other Associate States*", in accordance with the principles laid down in Article 2(2) of Directive 72/166/EEC. The first Appendix of the new Agreement incorporates all the provisions of the "Uniform Agreement between Bureaux" and of the "Multilateral Guarantee Agreement" into a single document ("the Internal

Regulations"). These Internal Regulations abrogates and replaces these two latter agreements.

5th Motor Insurance Directive

On 22 October, the EP resolution containing 26 amendments was adopted by the Plenary with very wide support (525 votes in favour, 9 against and 16 abstentions). The Commission accepted, fully or in spirit, six of these amendments (5, 7, 14, 18, 20 and 21) as they are compatible with the aims of the [proposal for a 5th Motor Insurance Directive](#).

The Commission rejected the other 20 amendments which were not compatible with the objectives or the legal base of the proposal. In relation to the two main issues still pending at the Council working group (minimum amounts of cover and pedestrians and cyclists, see below), the position of the EP is the following:

- Minimum amounts of insurance cover: EUR 5 000 000 per accident for personal damages and EUR 2 000 000 per accident for material damage.
- Pedestrians and cyclists: deletion of the provision.

Both amendments were rejected by the Commission.

Following the Council Working Party meeting held on 31 October 2003, the file was very close to political agreement. The Italian Presidency could try to achieve this at the Competitiveness Council of 26/27 November 2003.

4. Solvency II

A meeting of the IC Solvency Subcommittee was held on 23 October 2003. On the basis of a Commission staff document [MARKT/2539/03](#), a possible structure for a framework directive was discussed. The proposed structure closely relates to that of the "codified" life directive ([2002/83/EC](#)). Member States' representatives expressed general support for this approach.

At the meeting, significant time was spent on discussing a number of detailed areas for further technical work. The purpose of this first discussion was to provide input to the Commission staff's efforts to prepare draft mandates to CEIOPS and further technical papers.

Representatives of the interim CEIOPS met with Commission staff in Athens to discuss the overall cooperation on the Solvency II project. Subsequently, Commission staff had a fruitful meeting with a CEIOPS co-ordination group appointed by the Bureau. This group is chaired by France (Oliver Fliche) and has members from Belgium, Denmark, Germany and the United Kingdom.

The next meeting of the IC Solvency Subcommittee is foreseen for mid-January 2004. The focus of the meeting will be a discussion of the next Commission staff paper with draft mandates and technical issues. At subsequent meetings during spring, further mandates as well as elements of the framework directive will be discussed. The first set of mandates could be adopted in April-May, and the second in mid-2004.

The framework directive may be presented in the beginning of 2005.

5. Reinsurance supervision

The preparation of the fast-track reinsurance directive is at an advanced stage, and at the meeting of the IC Reinsurance Subcommittee on 31 October 2003 the latest version of the draft proposed directive text ([MARKT/2531/02 Rev. 3](#)) was discussed together with the results of the third round of simulations.

The Commission Services are currently considering comments made by Member States as well as comments from the Stakeholder Consultation made during the autumn. The Stakeholder Consultation is a part of the "extended impact assessment" that will be presented at the same time as the proposal for a reinsurance directive. This analysis will contain an analysis of the major strategic choices made during the project as well as summary results from the simulations.

It is foreseen that the proposed reinsurance directive will be presented towards the end of the first quarter of 2004.

6. Guarantee schemes

As a result of the working group's discussion it appears that "*moral hazard*" does not seem to be, for the majority of delegations, a major difficulty for the establishment of guarantee schemes. The main concern for a number of delegations was the problem of the *cost of the system*, even if it was clear that the financing of the scheme would be a matter left to national legislation in the event of future EU harmonisation. Furthermore, the group felt the need to examine the *situation of motor guarantee funds (as provided for in the motor insurance directives) and other, similar bodies which may exist in the Member States within the framework of other forms of compulsory insurance*, with regard to the cover of the risk of insolvency of the insurance undertaking. The problem is the extent to which these special guarantee funds, when they cover insolvency risk, should co-exist with general insurance guarantee schemes.

A questionnaire [MARKT/2528/03](#) covering the two afore-mentioned issues – cost of the system and compulsory insurance – was therefore sent on 17 September 2003 to the Member States. The replies are currently being analysed and will be examined

by the working group at its next meeting, probably in early 2004.

A new issue was submitted for the consideration of the working group. The question was whether the group, in examining the future harmonisation of insurance guarantee schemes in the European Union, should include pension funds within its scope of reflections. The suggestion seems very opportune after the adoption of the new Directive [2003/41/EC](#) on the activities and supervision of institutions for occupational retirement provisions.

As the subject of pension funds is not in principle covered by its mandate – which focuses on guarantee schemes for insurance undertakings – the working group agreed to refer the matter to the Insurance Committee. The Members of the Committee are therefore invited to answer the question whether the working group on insurance guarantee schemes should include within its scope of analysis the possible harmonisation of guarantee schemes for pension funds. It is understood that the inclusion of pension funds within the scope of examination of the working group would not prejudice in any way the final decision in this regard.

7. E-Commerce

The Commission's services have prepared a new working paper ([MARKT/2541/03](#)) which will be discussed in the next meeting of the IC working group scheduled for 2 December 2003. Based on this working document the meeting will further consider particular issues (pre-contractual information, applicable law, contract law) and concrete action to be taken in order to attain further convergence between the insurance and e-commerce legal frameworks and removal of the current derogation for insurance in the E-commerce directive.

8. Accounting

On 16 July 2003, the European Accounting Regulatory Committee (ARC) voted unanimously in favour of a Commission proposal for a regulation to endorse immediately all existing International Accounting Standards (IAS) and related interpretations, with the exception at this stage of IAS 32 & 39, two standards dealing with the accounting treatment of financial instruments and that are the subject of a review by the International Accounting Standards Board. Further to the ARC vote, the European Commission adopted on 29 September a Regulation endorsing most International Accounting Standards (IASs), including related interpretations (SICs), and therefore confirming the requirement for their compulsory use from 2005. Endorsed standards were published in OJ L 261 of 13 October 2003.

The Commission will consider for endorsement IAS 32 and IAS 39 (which is inspired by an US accounting standard, FAS 133) as soon as they will be completed by the IASB, i.e. by March 2004 at the latest. The IASB and the European banking and insurance industries are at present engaged into an intense bilateral dialogue with a view to achieve in time a solution acceptable to all, regarding the application of fair value measurement to financial assets and notably interest-rate hedges."

Insurance Accounting

In July 2003, the IASB presented [Exposure Draft 5 "Insurance Contracts"](#) that together with the revised IAS 39 will provide accounting rules for insurance companies during "phase 1" 2005-2007/2008. [EFRAG](#), [IAIS](#) and other organisations have prepared comments on the exposure draft.

On 11 September 2003, a meeting of the IC Accounting Subcommittee was organised in order to discuss the IASB exposure draft. Representatives from the IASB and EFRAG attended the meeting. The IC Accounting Subcommittee did not present a separate comment letter, but supervisors have provided useful input to the EFRAG comment letter to the IASB. Many European supervisors as well as the Commission Services provided input to the IAIS comment letter on ED5.

At the Subcommittee meeting, a first discussion was held on the possible need for consequential changes to the Directives due to the IASB phase 1 rules. After the orientation debate in the IC on this matter, there will be further working meetings as soon as the contents of the IASB phase 1 rules are known. The first of these meetings could be organised in January/February 2004.

9. Gender equality

On 6 November 2003 the Commission has presented to the Council and the European Parliament a *Proposal for a Council Directive implementing the principle of equal treatment between women and men in the access to and supply of goods and services*, [COM\(2003\)657 final](#).

The proposal is based on Article 13 of the Treaty on European Union, which allows the Community to take measures to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. As problems of discrimination on the grounds of sex are particularly apparent in the provision of goods and services, the Commission has decided to concentrate its proposal in this area. The prohibition of discrimination would apply to all available goods and services, but the proposal has flexibility built in, by allowing for justified exceptions, where a good or service was intended exclusively or primarily for members of one sex (such as single-sex sessions in a swimming pool, or single-sex private member's clubs), or where the

skills required for its delivery were different for each sex (such as hairdressing)

The proposal *applies also to insurance sector as well as all other financial sectors*. With respect to insurance, the proposal provides the *prohibition of sex as a factor in the calculation of premiums and benefits for insurance and related financial services* (Art. 4). However, in order to avoid a sudden readjustment of the market, the prohibition of such factors should apply only to new contracts concluded after the date of transposition of the Directive. In addition the proposal allows Member States to postpone the application of such prohibition six years more after the date of transposition. In that case the Member States concerned shall compile, publish and regularly update comprehensive tables of mortality for the guidance of insurance undertakings

The proposal points out that equal treatment for women and men is a fundamental right and the Commission believes that the freedom to set tariffs must be subject to that right. The separation of men and women into different pools leads to an unjustified difference of treatment and a resulting disadvantage for one sex or the other. The Commission concludes therefore that differences of treatment based on actuarial factors directly related to sex are discriminatory and incompatible with the principle of equal treatment and should be abolished. This position is in line with the ruling of the European Court of Justice which has ruled that different contributions for men and women to an occupational pension scheme are discriminatory.

The use of actuarial factors based on sex is justified by the industry on the grounds that women live longer. However, there are a number of factors that are not linked to sex that are equally important in establishing life expectancy, such as socio-economic or marital status, the region a person lives in or levels of smoking. When these factors are removed from the equation, differences in life-expectancy on purely gender grounds are much less than stated. Equally, in some member States a distinction between the sexes is made in motor insurance, with men paying higher premiums. Here again a number of factors other than sex play a role. It is therefore the view of the Commission that calculating risk based on the grounds of sex is discrimination. In the health insurance sector, women are often charged higher premia on the grounds that there is a likelihood that they will become pregnant and give birth, with associated cost implications. In this case, the discrimination rests in the fact that the benefit derives to society as a whole, whereas the costs are borne by one section of society alone

The proposal will now be forwarded to the EU's Council of Ministers for adoption by unanimity, after consultation of the European Parliament.

10. EU–US Regulatory Dialogue

The fourth meeting of the EU-US regulatory dialogue was held in Brussels on 22-23 June 2003. The US delegation consisted of Larry Mirel (Commissioner, DC), Al Gross (Commissioner, Virginia), Al Iuppa (Commissioner, Maine) and George Brady (NAIC). The EU delegation was led by David Deacon. Commission staff as well as representatives from France, Germany, Italy, Ireland, the Netherlands, the United Kingdom and Slovenia participated the meeting.

Having initially spent significant time on exchanges on the respective systems, the discussion is now focusing on detailed issues, many of which were at the core of the earlier problems encountered in the trade negotiations. The following blocks of issues were discussed in the meeting:

1. Harmonising EU-US regulatory structure
 - solvency regulation
 - supervisory intervention in time of crisis
 - accreditation
 - guarantee funds
2. Facilitating trans-Atlantic insurance business
 - reciprocity and mutual recognition
 - enforcement of court decisions
 - collateral requirements
 - regulating e-commerce
3. Joint strategy concerning international organisations
 - GATS, IAIS, IASB

The next full dialogue meeting is foreseen for January 2004 in Kansas City. The agenda for this meeting will inter alia include the following items:

- exchange of information in areas important for our ongoing work (Solvency II etc) and market developments;
- elaboration of a model memorandum of understanding on information exchange on insurance groups.
- follow-up of the discussion on reciprocity and mutual recognition;
- discuss the continued cooperation on IAIS issues and elaborate whether our intentions with this organisation could be formalised.

11. New Committee architecture – Package to improve regulation of banking, insurance and investment funds

On 5 November 2003, the European Commission has adopted a package of measures ([IP/03/1507](#)) which will allow the EU to respond far more quickly and efficiently to developments in the financial sector. The measures aim at speeding up the legislative process at European level and will

help to ensure consistent implementation and enforcement of rules across the EU.

This package consists of seven measures – a proposal for a Directive and six Commission Decisions. The objective is to create a modern and streamlined decision-making structure for financial services and improved regulatory and supervisory co-operation. In fact, the adopted package aims to extend the committee structure and approach already used in the securities sector since 2002 to banking, insurance and collective investment funds (UCITS). The final result would be real improvements in the way European financial markets are regulated and supervised, a boost for integration and better protection for investors and consumers."

Under the new approach, Directives decided upon by co-decision by the European Parliament and Council will define the framework principles to be followed. They will also define the scope for any technical implementing measures to be decided by the Commission with the assistance of the regulatory committees ("level 2") such as the European Insurance and Occupational Pensions Committee (EIOPC), the European Banking Committee (EBC) and the European Securities Committee (ESC). These regulatory committees take into account the technical advice received from the advisory ("level 3") committees of supervisors, such as the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS), the Committee of European Banking Supervisors (CEBS) and the Committee of European Securities Regulators (CESR). These committees, composed of national supervisory authorities, also aim to ensure the consistent implementation of EU law in the daily supervisory practice in the Member States.

The adopted package is composed of seven measures:

- Two Commission Decisions with more or less immediate effect creating new "Level 3" committees of supervisors in the banking and insurance & occupational pensions fields. The decisions establishing the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) – C(2003)4060 – and the Committee of European Banking Supervisors (CEBS) will have effect from 24 November 2003 and 1 January 2004 respectively.
- A proposal for a Directive [COM\(2003\)659](#), amending existing references to the Banking Advisory Committee, Insurance Committee, and UCITS Contact Committee to refer to new "Level 2" committees in the banking, insurance & occupational pensions fields and to the existing European Securities Committee when involved in the adoption of Level 2 implementing measures (comitology capacity);

- Two Commission Decisions establishing the new "Level 2" committees in banking and insurance & occupational pensions – C(2003)4065 on EIOPC – when acting in advisory capacity;
- Two Commission Decisions amending the 2001 Decisions establishing the European Securities Committee and Committee of European Securities Regulators to make reference to their new role on investment funds (UCITS).

The latter four Commission Decisions will have "suspensive effect" in that they will only come into force if and when such an amending Directive is adopted. This is done in order to avoid duplication of committees and to avoid pre-empting the views of both the European Parliament and the EU's Council of Ministers on the proposed Directive.

The effect of the package will be to create a new financial services committee organisational structure as follows:

	Banking	Insurance and Occupational Pensions	Securities (including UCITS)
Regulatory committee	European Banking Com. (EBC)	European Insurance and Operational Pensions Committee (EIOPC)	European Securities Committee (ESC)
Com. of Supervisors	Com. of European Banking Supervisors (CEBS)	Committee of European Insurance and Occupational Pension Supervisors (CEIOPS)	Committee of European Securities Regulators (CESR)

12. Enlargement

The Commission is continuing to closely follow and review the progress of Accession Countries in the implementation of insurance legislation. The Commission has published the [comprehensive monitoring reports](#) on 5 November 2003.

In order to answer the questions the Accession Countries might have on the latest directives, the Commission services organised two seminars on 15 and 22 September 2003 in Brussels. While the first seminar dealt with solvency and pension funds, the second focused on insurance mediation and reorganisation and winding-up of insurance undertakings.

Transposition of the *EU acquis* has yet to be completed in the Czech Republic, Lithuania, Malta, Poland and Slovakia, while Cyprus, Estonia, Hungary and Latvia still have to proceed to some fine-tuning for their legislation to be aligned. Peer reviews have highlighted the need to strengthen administrative capacity in some supervisory

authorities (Cyprus, Czech Republic, Lithuania, Poland and Slovakia).

Polish legislation raises specific issues concerning qualified participation and language requirement for some board members of insurance companies.

Most accession countries have action plans which would allow them to be in line with the *acquis* by the day of accession. These action plans have yet to be implemented. One country seems to be seriously lagging behind, Poland; unless remedial action is taken, this is a major cause for concern.

13. Financial Services Action Plan

FSAP – 9th Progress Report

The 9th Progress Report (and its annex) concluded that the strengthened regulatory and supervisory framework resulting from the FSAP has helped European financial markets to weather recent difficulties. The broad based commitment to deliver the FSAP has not been thrown off course despite depressed economic conditions. Progress in adopting the legislative FSAP measures to timetable has been maintained: 36 of the 42 original measures have been finalised. Council and Parliament should conclude the remaining FSAP measures before April 2004, ahead of the European Parliamentary elections and as agreed by Heads of State and Government in March 2003.

Since the last Progress Report of June 2003, agreement has been reached on the Prospectus Directive, introducing a single European Passport for EU issuers, and, as part of a broader tax-package, the Directive on Taxation of Savings Income. Other proposals ready for adoption are (i) the Investment Services Directive on which a political agreement has been reached in the Ecofin Council of Ministers on 8 October 2003, (ii) the Transparency Directive, and (iii) the Takeover Bids Directive. Furthermore, the Commission will soon launch a new proposal for the 10th Company Law Directive on cross-border mergers and come forward with a Communication on Clearing and Settlement.

Underpinned by an ambitious timetable, the Commission will continue its work on the implementation of the revised capital framework for banks and investment firms by 2006/2007. It will also launch several initiatives announced as priorities in its Communication on Company Law and Corporate Governance of 21 May 2003. Work will continue on the modernisation of EU legislation on audit in the 8th Company Law Directive and on the implementation of the International Accounting Standards 32 and 39. Other initiatives where the Commission will focus its efforts on are the further strengthening of the legal framework to combat money laundering and terrorist financing through a third Money Laundering Directive, a Directive on Reinsurance

Supervision, a proposal for an EU Legal Framework for Payments and a proposal for a framework directive on Insurance Solvency II to be expected in 2005.

Assessment of and follow-up to FSAP

With the FSAP drawing to its close, the Commission believes it opportune to undertake a systematic assessment of the state of integration of EU financial markets. This in-depth assessment process will be wide-ranging, transparent and open.

As a first step [four new expert groups](#) of high-calibre specialists in the fields of banking, insurance, asset management, and securities trading have been established. The groups will convene for the first time in November and December 2003. These groups will help the Commission to map out key issues for discussion during the ensuing open consultation in the summer of 2004. The process is not a prelude to a comprehensive new legislative programme along the lines of the FSAP. The results of the consultation process may serve as the basis for further debate on specific areas where carefully targeted legislation is necessary. It may also identify areas where further EU-level legislative action is not necessary or productive.

14. FSC – Financial Services Committee

The Financial Services Committee (FSC) provides political oversight and advice to the ECOFIN Council and the Commission on issues related to the regulatory framework for financial markets.

The FSC has had three meetings so far. The first was on 26 May and has already been reported on in the previous IC Newsletter. During their meeting of 9 July, they discussed the Communications of the Commission on Company Law (including Corporate Governance) and Statutory Audit. Furthermore, the indicator studies of benefits from financial integration, the Brouwer reports on prudential supervision and crisis management in EU financial markets, and the results of the Inter Institutional Monitoring Group on the state of play of the Lamfalussy regulatory procedure were discussed. During their meeting of 3 October, issues related to the implementation of the capital adequacy requirements for banks and investment firms were discussed, followed by an introductory dialogue on Clearing and Settlement arrangements. Other items discussed were the Commission's FSAP progress report – including an outline of the initiative by the Commission to organise an overall assessment of the FSAP –, as well as the work of the FSC in the area of financial integration. In both meetings the Commission debriefed the FSC on the progress made in the EU-US Financial Markets regulatory dialogue.

The next two meetings of the FSC are foreseen for 3 December 2003 and 16 March 2004.

15. Council Presidency / Italy

The Commission submitted the proposal for the 5th Motor Insurance Directive to the Council on 7 June 2002. The European Parliament delivered its Opinion at first reading on 22 October 2003.

The Economic and Social Committee gave its Opinion on 26 February 2003.

The draft Directive has been examined by the Insurance Working Group of the Council during four meetings under the Italian Presidency, the last time on 31 October 2003.

In the light of the results of the discussions at working group level, the Presidency submitted a compromise text to the Permanent Representatives Committee, which examined it at its meeting on 5 November 2003. While some issues still remain to be solved (particularly the ones regarding the minimum amounts of insurance cover), the compromise text presented by the Presidency appears to be a good basis in view of reaching a political agreement on this proposal in the next Competitiveness Council of 26/27 November 2003.

16. Conference / Interim CEIOPS

Since its creation at the Dresden meeting in May 2003, the Interim CEIOPS has been organising itself in order to prepare for its future functions in the framework of the Lamfalussy process, and in particular, regarding the Solvency II project. The Committee has also continued the activity of the former Conference of EU insurance supervisors as a forum of co-operation and information exchange.

The 2nd meeting of the Interim CEIOPS took place in Athens, Greece on 15-16 October 2003. The main issues on the agenda were the continuation of the setting up of the Interim CEIOPS and its transformation into CEIOPS, and the organisation of the future work of the Committee, in particular regarding the Solvency II exercise.

Regarding the setting up of the Committee, discussions on organisational issues were initiated. The issues debated included:

- the setting up of a consultative panel comprising consumers and industry representatives
- the future budget of the Committee
- the adhesion to the co-operation Protocols of the authorities of the accessing countries and the authorities competent for IORPs (Institutions for Occupational Retirement Provision).

The location of the secretariat was however not decided.

Concerning the organisation of its future work, the Interim CEIOPS has been in contact with the European Commission on the Solvency II project, and has decided to create four Working Groups for this major exercise (Pillar I Life, Pillar I Non-life, Pillar II and Group/Cross-sectoral issues). These working groups will take into account work previously performed in preparation of Solvency II (e.g. in the domain of internal control).

The creation of a Working Party on financial stability has also been decided. It will, in particular, set up a system to monitor the situation of the insurance sector and prepare the contribution of the CEIOPS to the work of other European bodies in charge of financial stability issues (e.g. the FSC and the EFC).

The Interim CEIOPS has also decided to organise a Working Group on IORPs. This group should, in particular, study the issues raised by the implementation of the new IORPs Directive and assess the measures needed to ensure a proper co-operation between supervisors in this matter.

In addition, the Committee has considered several issues of interest for insurance and occupational pension supervisors like, for example, E-notification.

In parallel to the plenary meetings in Athens, the following issues were studied in parallel seminars:

- supervision based on risk analysis
- the supervision of occupational pension funds and the preparation for the implementation of the new Directive on the supervision of IORPs.

17. IAIS Technical Committee

The main IAIS committees have held meetings in Guernsey (mid July) and in Singapore (early October) at the Annual IAIS Conference.

18. Joint Forum

The Joint Forum, in which supervisors of Banking sector, Financial Market and Insurance take part, met on November 6th and 7th in New York.

The first days was devoted to roundtables with representatives of companies from the three sectors and focused on issues related to risk management. Several points were raised:

- The industry generally deplored that the benefits of trans-sectoral and trans-national diversification are generally not translated into lower capital requirements. However, the difficulty to understand both banking and insurance matters for one single person was acknowledged. Moreover, the benefits of geographical diversification were probably more clear than those of business diversification.

- Supervisors are more inclined to share the view that these diversifications are intrinsically beneficial to the company and did not deserve a special regulatory bonus, which could encourage a concentration movement among firms. Moreover, Basel II allows capital reduction as long as the firm can clearly demonstrate the risk alleviation linked to diversification.
- The general principle of convergence was put forward, not in a very specific way whether it is trans-sectoral or geographical. However, it was recognized that this need for convergence must also take into account the particularities of the different markets, and notably, market discipline which is not the same in each business and could easily justify differences in capital requirements.
- The views of the companies on the concept of economic capital seem to be quite diverse. Some considers it a central tool for risk management, while others were more skeptical towards the idea that one unique number could actually catch the risk profile of a group.

The plenary meeting of the Joint Forum took place on the second day. Two issues were mainly discussed:

- The Joint Forum is currently preparing a report on the issue of credit risk transfers. Many participants insist that the report encompass some quantitative analyses, notably the share of credit derivatives in the assets of Insurance companies country by country in principal jurisdictions.
- Some new mandates should be prepared for further work by the Joint Forum in view of its February meeting. The potential subjects agreed at this point are the development of outsourcing, intersectoral risk transfer on a broader extend than credit risk transfer, the structure of large groups and possibly some convergence issues.

Annexes:

BAC – Banking Advisory Committee
24 June summary record enclosed (*Annex 1*)

9-10 December agenda enclosed (*Annex 2*)

ESC – European Securities Committee

10 July summary record available at:

http://europa.eu.int/comm/internal_market/en/finances/mobil/docs/esc/meeting-07-2003-report_en.pdf

19 September summary record available at:

http://europa.eu.int/comm/internal_market/en/finances/mobil/docs/esc/meeting-09-2003-report_en.pdf

ARC – Accounting Regulatory Committee

16 July summary record available at:

http://europa.eu.int/comm/internal_market/accounting/docs/arc/200307-summary-record_en.pdf

21 November draft agenda enclosed (*Annex 3*)



SUMMARY OF DECISION POINTS AT THE 73rd MEETING OF THE BANKING ADVISORY

COMMITTEE (BAC): SALZBURG, 24 JUNE 2003

1. adoption of the agenda and of the minutes of the 72nd meeting

Agenda: adopted. Minutes 72nd meeting: adopted with one amendment requested by the French delegation.

2. Committee architecture in the banking sector

Future Committee of European Banking Supervisors (CEBS): agreement on informal charter reached at workshop on 23 June. Qualified majority voting will be used for providing advice to the Commission, whenever consensus cannot be achieved. Consensus required on other matters, including convergence. Consultation of industry and consumers will be a key aspect. Political decision at ministerial level needed urgently on location to allow CEBS to be operational on 1 January 2004 (José Maria Roldán to write to EFC Chairman).

Adaptations to BAC format: Endeavour to have only one more BAC meeting in 2003 (December). From 2004, composition will be restricted to 1+1 format. Chairmanship to be transferred to finance ministry representatives pending amendments to banking directive 2000/12/EC. In interim period, Financial Services Committee will discuss high level policy issues on capital review (scope of discretion, cyclical, complexity, venture capital...) on 3 October.

3. Capital review

Basel: progress needed on cross-border issues (Accord Implementation Group)

EU Third consultative paper: will be released shortly for public consultation until 22 October, together with summary from QIS3. Strong support for the quality of the documents.

Scope of application: TSG mandated to propose clear and strict criteria for waiver at solo and sub-consolidated levels.

Overview of differences between EU and Basel: Limited differences justified by structure of EU system. José Maria Roldán to transmit document to Chairman of Basel Committee.

Pillars 1&2; supervisory review: support for the Commission's and Groupe de Contact's pragmatic approaches. Provisions on supervisory review in draft directive to be completed, in particular in light of consultation. Groupe de Contact to identify areas for supervisory convergence.

4. third countries

Agreement that BAC should give guidance, and that technical support be provided by the dedicated sub-group of the Mixed Technical Group, who should ensure that the Groupe de Contact was kept in close touch and agreed the final conclusions. Priority to be given to US and Switzerland.

5. Investment services directive

Broad support for UK proposal, except in the following areas, where different schools of thought exist: scope of "general good" provisions, tied agents. Proposal on foreign exchange not supported. Commission to inform Council Working Group of detailed points made at its next meeting on 27 June.

6. Outsourcing

Development of high level principles by the Groupe de Contact welcomed. Commission to look at possible upgrades to existing legislation to ensure that supervisors receive appropriate information upon external providers.

7. Multilateral development banks

Consensus on the recognition of MIGA as multilateral development bank. Commission to propose draft measures to amend article 1(19) of Directive 2000/12/EC (comitology procedure)

8. Internal matters

José Maria Roldán was elected chairman. New chair and deputy-chair (from finance ministry representatives) to be elected at the December meeting of the BAC. Secretariat to take soundings on possible candidates.

9. Newsletter [information only]

10. AOB

Consumer credit directive: BAC to be consulted in writing.



MARKT/1074/03

DRAFT AGENDA

74th meeting of the Banking Advisory Committee (BAC)
Brussels, 9-10 December 2003

Part A: BAC acting as advisory committee (Title VI of Directive 2000/12/EC)

Items for discussion and decision

1. **Adoption of the Agenda (MARKT/1074/03) and of the Minutes of the 73rd meeting (MARKT/1075/03)**
2. **Committee Architecture**
 - Update: progress towards a new committee architecture in financial services
 - Decision: adaptations to the composition of Member State delegations to BAC (MARKT/1076/03)
3. **Post FSAP strategy**
 - Feedback: first meeting of the Working Group on integration in banking sector
4. **Capital review**
 - Update on Basel and EU developments (MARKT/1077/03)
 - Feedback: high level summary of responses to consultation (MARKT/1078/03)
 - Discussion on the following aspects:
 - EU implications of debate on Expected loss/Unexpected loss (MARKT/1079/03)
 - Level of application of EU capital requirements (MARKT/1080/03)
 - Treatment of investment firms (MARKT/1081/03)
 - Consistency and convergence in the application of the EU directive (MARKT/1082/03)
 - Directive architecture and integration with existing legislation (MARKT/1083/03). A preliminary draft of the amended Codified Banking Directive 2000/12/EC (MARKT/1084/03) will be provided as background document.
 - Update: Progress by the Groupe de Contact on supervisory review
 - Discussion: Groupe de Contact's annual report on solvency
5. **E-Money**
 - Decision: treatment of telecom operators under the E-Money Directive (MARKT/1085/03).

6. Bank accounting and auditing

- Update: main issues covered by the Sub-committee on Accounting and auditing,
- Feedback: review of the functioning of EFRAG

Items for Information

7. Accession and candidate countries

- State-of-play on the transposition of banking directives in accession countries (MARKT/1100/03)
- Peer review process for Bulgaria and Romania

8. Third countries and equivalence of group supervision

- Potential developments in the supervision of investment firms in the US (MARKT/1101/03)

9. Activities in other EU fora

- The Newsletter (MARKT/1102/03) will provide information on developments in financial services.

Internal Matters

10. Election of the Chair and Vice-Chair of the BAC

11. Any other business

Part B: BAC acting as regulatory committee (Article 60(2) of Directive 2000/12/EC)

1. Rules of procedures

- Adoption: New rules of procedures in conformity with Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission (MARKT/1103/03)

2. Proposal for Commission Directive making a technical amendment to Directive 2000/12/EC

- Vote: Proposal to include the Multilateral Investment Guarantee Agency (MIGA) in the list of Multilateral Development Banks under Article 1(19) of Directive 2000/12/EC (MARKT/1104/03)

3. Future work: application by Corporacion Andina de Fomento for Multilateral Development Bank status

Fifth Meeting of the Accounting Regulatory Committee (ARC)

Brussels, 21 November 2003 (10 am)

**Conference Centre A. Borschette
Rue Froissart 36**

Draft Annotated Agenda

Approval of the minutes of the ARC meeting of 16 July 2003

IASB governance and strengthening of EFRAG

The Commission will report on the meetings held on 4 November with the IASC Board of Trustees and on 20 November with the Supervisory Board of EFRAG.

Presentation by EFRAG of its opinion on IFRS 1 First Time Adoption of International Financial Reporting Standards

IAS 32 and IAS 39 – State of play

The Commission will report on the state of play of the discussions.

IASB forthcoming standards and interpretations

In view of the 2005 deadline, a discussion will take place on ways and means to accelerate the endorsement process for the standards to be adopted by March 2004. Member States are asked to identify possible problems that they might have or see in relation with those standards.

Translations

Representatives from acceding Member States are invited to briefly explain the measures that have been taken in their respective States to ensure the translation of IAS that will have been endorsed before 1 May 2004.

Miscellaneous