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Mr Gabriel Bernardino
CEIOPS
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60327 Frankfurt am Main
Germany

Dear Mr Bernardino,

I would like to thank you for your letter of 1 April 2010 and the attached CEIOPS final advice on level 2 implementing measures which relate to the general criteria to be used to assess third country equivalence under Solvency II. I would also like to take this opportunity to thank CEIOPS for all the effort that has gone into producing this advice and specifically for the consultation process that has been carried out.

As you know, the decision was taken during the political negotiations on the Solvency II Directive ("the level 1 text") to split the equivalence assessment process into two phases; the first relating to the general criteria for the equivalence assessment and the second relating to the individual third country assessments. Now, that CEIOPS has provided its final advice in relation to the first phase, I would like to set out what we envisage as the next stages of this part of the Solvency II project.

However, before doing this I would like to set the context in which I see the third country equivalence assessments being carried out. I fully agree with the statement made in your letter that the overarching principle should be to ensure that the third country supervisory regime ensures a similar level of policy holder and beneficiary protection as the one provided under Solvency II. Solvency II adopts an economic risk-based approach to insurance regulation and the equivalence assessment provides us with a real opportunity to converge internationally towards a risk-based approach. Consequently, it is my view that the equivalence assessments should focus on the substantive issue of whether the third country (re) insurance undertakings are subject to a risk-based supervisory regime.

With the above in mind, I have set out below the further work that we would like CEIOPS to undertake.

1) Identification of third country supervisory regimes to be included in the first wave

The Commission intends to issue a call for advice in the near future that will ask CEIOPS to provide fully consulted upon final advice on which third country supervisory regimes should be included in the first wave of equivalence assessments ("first wave third countries").

The aim of this process is to identify the third countries, where an equivalence assessment would be desirable before the introduction of Solvency II in 2012. It is foreseeable that further equivalence assessments will be carried out after 2012 and the Commission will seek CEIOPS involvement in that process as necessary.

It is likely that the Call for Advice will set out a range of factors that CEIOPS should consider when providing its advice, including the materiality of an equivalence finding in respect of the third country to EU insurance and reinsurance undertakings and their policy holders. In order to ensure a fully transparent process, the final advice produced by CEIOPS should clearly set out the factors that have been taken into account in determining the list of first wave third countries and the methodology used.

CEIOPS shall indicate whether an assessment should be made of the first wave third country:

- 1) solely in relation to equivalence under Article 172 of the level 1 text (reinsurance undertakings with their head office in the third country);
- 2) solely in relation to Article 227 of the level 1 text (group solvency of a participating undertaking in a third country insurance or reinsurance undertaking where deduction and aggregation is used to calculate group solvency);
- 3) solely in relation to Article 260 of the level 1 text (third country group supervision); or
- 4) in relation to a combination of the aforementioned articles.

The Commission recognises that for some third countries the consideration of the factors outlined above will result in different conclusions with respect to the different articles and that therefore a flexible approach is needed. However, the Commission would encourage simultaneous assessments of equivalence in relation to all three articles relating to equivalence, Articles 172, 227 and 260 wherever possible and appropriate.

CEIOPS will be asked to produce fully consulted upon final advice on the third countries to be included in the first wave by the end of August 2010.

2) European Commission decision on first wave third countries

Once we have received final advice from CEIOPS, the Commission will, in consultation with other stakeholders, make a final decision on those third country supervisory regimes that will be included in the first wave of assessments. CEIOPS can expect that this decision will be made and communicated to it by mid November 2010.


3) Equivalence Assessments of first wave third countries

Following the decision on first wave third countries, CEIOPS is then asked to produce final advice analysing whether these first wave third countries satisfy the general criteria for assessing third country equivalence. The final advice should include both an analysis of the extent to which the criteria are fulfilled and an assessment of whether it is possible for the Commission to adopt a positive equivalence finding in relation to that third country based on the criteria. In the event that CEIOPS is of the view that certain parts of the criteria are not met, then it should identify which aspects of the third country's regime could be deemed equivalent to Solvency II. Fully consulted upon final advice should be provided to the Commission by the end of July 2011.

In setting out the timetable above, we have taken on board the comments made in your letter on the timing issues identified by stakeholders, namely that, while decisions should be taken before Solvency II becomes applicable, there should be sufficient certainty over the likely outcome in relation to other level 2 implementing measures before any decisions are made. It is currently the Commission's intention to publish its proposed level 2 implementing measures by the end of this year and for these to be adopted by the end of next year. CEIOPS will therefore have available to it the published Commission proposals on level 2 implementing measures when it prepares its final advice on whether equivalence criteria have been met.

In conclusion, I would like to thank you and your colleagues again for the work you have undertaken so far on equivalence. This is an important issue, on which there is considerable focus, and therefore it is fundamental that the right result is achieved.

Yours sincerely,



Jörgen HOLMQUIST

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CONSULTATIVE DOCUMENT

DRAFT CALL FOR ADVICE FROM CEIOPS

(THIRD COUNTRY EQUIVALENCE)

Purpose of this document

This document contains a Call for Advice from the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS). The Call for Advice is structured in two parts. The first part requests CEIOPS to provide final advice on which third country supervisory regimes should be included in the **first wave of equivalence assessments**. The deadline for this work is the **end of August 2010**. The second part requests CEIOPS to provide final advice on whether the **supervisory regimes of these first wave third countries satisfy the general criteria for assessing third country equivalence**. This part should be commenced only once the list of first wave third countries has been agreed with the European Commission and completed by the **end of July 2011**.

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CALL FOR ADVICE FROM CEIOPS: EQUIVALENCE

1. BACKGROUND

CfA.1 The overarching aim of the equivalence assessment should be to ensure that the third country supervisory regime ensures a similar level of policy holder and beneficiary protection as the one provided under Solvency II.

CfA.2 Solvency II adopts an economic risk-based approach to insurance regulation. The equivalence assessment provides a real opportunity to converge internationally towards a risk-based approach. The focus of equivalence assessments should therefore be on the substantive issue of whether the third country (re)insurance undertakings are subject to a risk-based supervisory regime.

2. PART 1: IDENTIFICATION OF THIRD COUNTRY SUPERVISORY REGIMES TO BE INCLUDED IN THE FIRST WAVE

CfA.3 The first part of this Call for Advice requests CEIOPS to provide fully consulted upon final advice on which third country supervisory regimes should be included in the first wave of equivalence assessments ("first wave third countries").

CfA.4 The aim of this process is to identify the third countries, where an equivalence assessment would be desirable before the introduction of Solvency II in 2012. It is foreseeable that further equivalence assessments will be carried out after 2012 and the Commission will seek CEIOPS involvement in that process as necessary.

2.1. Factors to be taken into account

CfA.5 The determination of which countries should be included in the first wave will necessarily take into account a broad range of factors. Below is a non exhaustive list of some of the factors that CEIOPS should take into account when determining the list of first wave third countries:

- Whether the third country currently has a supervisory regime that is fully risk-based or has taken measures to move towards such a system
- The materiality of an equivalence finding to EU insurance and reinsurance undertakings and their policy holders
- The number of related undertakings situated in the third country held by EU insurance and reinsurance undertakings
- The importance to the insurance market in the third country of the equivalence finding

- The existence currently of mutual recognition or equivalent arrangements between third countries and Member States

CfA.6 The final advice produced by CEIOPS should clearly set out the factors, in addition to those set out above, that have been taken into account in determining the list of first wave third countries.

2.2. Methodology

CfA.7 CEIOPS should in its final advice outline the methodology used to define the list of first wave third countries. For example, if data on the number of related undertakings situated in third countries is collected then the method for collecting this data should be clearly set out.

CfA.8 CEIOPS shall indicate whether an assessment should be made of the first wave third country:

1) solely in relation to equivalence under Article 172 of Directive 2009/138/EC (reinsurance undertakings with their head office in the third country);

2) solely in relation to Article 227 of Directive 2009/138/EC (group solvency of a participating undertaking in a third country insurance or reinsurance undertaking where deduction and aggregation is used to calculate group solvency);

3) solely in relation to Article 260 of Directive 2009/138/EC (third country group supervision); or

4) in relation to a combination of the aforementioned articles.

CfA.9 The Commission recognises that for some third countries the consideration of the factors outlined above will result in different conclusions with respect to the different articles and that therefore a flexible approach is needed. However, the Commission would encourage simultaneous assessments of equivalence in relation to all three articles relating to equivalence, Articles 172, 227 and 260 ("the relevant articles"), wherever possible and appropriate.

CfA.10 Notwithstanding the above, the assessment of equivalence in accordance with Article 227 and Article 260 in particular should be combined wherever possible. While the assessments involved in each case are different, both are likely to be relevant to large internationally active groups.

CfA.11 Where CEIOPS advises that an assessment should only be in relation to one or a combination of two of the three articles, then a clear rationale should be set out in the final advice explaining why this is considered to be the most appropriate approach.

2.3. Stakeholder involvement

CfA.12 As always, consultation and discussions with stakeholders are paramount to ensure a fully transparent process. CEIOPS should consult a wide range of

stakeholders, including the European insurance industry, third country supervisory authorities and the insurance industries of third countries.

2.4. Timetable

CfA.13 CEIOPS is asked to produce fully consulted upon final advice on the third countries to be included in the first wave by the end of August 2010.

3. PART 2: EQUIVALENCE ASSESSMENTS OF FIRST WAVE THIRD COUNTRIES

CfA.14 The second part of this Call for Advice requests CEIOPS to provide fully consulted upon final advice on the extent to which the first wave third countries satisfy the general criteria for assessing third country equivalence.

CfA.15 Although the Commission's proposal for level 2 implementing measures on the general criteria to be used for the assessment are unlikely to be published before the end of 2010, the assessment by CEIOPS should nonetheless be carried out using the draft proposed implementing measures that will have been tabled by the Commission for discussion at the Solvency Expert Group meetings. Once the Commission's proposal on the general criteria is published, CEIOPS should then check that the final published proposals are consistent with its advice.

CfA.16 The assessment should include an analysis of the extent to which the criteria are fulfilled. This assessment should not only examine the legislation in place in the third country, but also look at supervisory practices, implementation and application of that legislation within the third country's supervisory regime.

CfA.17 Based on this assessment the advice should indicate whether it is possible for the Commission to adopt a positive equivalence finding in relation to that third country based on the criteria.

CfA.18 In the event that CEIOPS forms the view that certain parts of the criteria are not met and therefore a positive equivalence finding in relation to that third country would not be possible, CEIOPS should identify which aspects of the third country's regime could be deemed equivalent to Solvency II and what additional steps would need to be taken by the third country supervisory regime in order for the remaining criteria to be met. CEIOPS should also indicate what concrete measures that third country has taken or plans to take to address these issues.

CfA.19 As outlined in section 3.3 below, the above assessment should be commenced once the final list of first wave third countries has been provided to CEIOPS. This list will also make clear whether the assessment should be carried out in relation to all or a combination of the relevant articles.

3.1. Methodology

- CfA.20 CEIOPS in its final advice on the criteria for assessing third country equivalence outlined in an annex a high level proposed methodology to be applied when assessing the equivalence of a third country supervisory regime.
- CfA.21 CEIOPS should review and expand this methodology taking into account comments received from stakeholders during the consultation on the general criteria. A fully consulted upon methodology should be published by mid November 2010.

3.2. Stakeholder involvement

- CfA.22 As above, CEIOPS should consult a wide range of stakeholders including the European insurance industry, third country supervisory authorities and the insurance industries of third countries.

3.3. Timetable

- CfA.23 The second part of the call for advice should only be commenced once the Commission has made a final decision on the third country supervisory regimes that will be included in the first wave of assessments. CEIOPS can expect that this decision will be communicated to it by the end of October 2010. The Commission will communicate to CEIOPS at the same time which of the relevant articles the assessment should be in relation to.
- CfA.24 Fully consulted upon final advice should be provided to the Commission by the end of July 2011.