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01 April 2010

CEIOPS' Advice for Level 2 implementing measures on Solvency II – Technical criteria for assessing 3rd country equivalence in relation to art. 172, 227 and 260

Dear Jörgen,

In your 12 June 2009 letter, you invited CEIOPS to deliver by March 2010 fully consulted upon final advice on Level 2 implementing measures in respect of the general criteria to be used to assess 3rd country equivalence under the Solvency II Directive. The specific provisions concerned relate to the reinsurance undertaking supervisory regime (Art 172), group supervision regime (Art 260) and use of local requirements in group calculation (Art 227). I am pleased to submit to you CEIOPS' final advice which has been adopted by Members at their 29-30 March Meeting.

Below I am providing you with an outline of the consultation process, overarching principles for equivalence, an overview of comments received and CEIOPS' next steps.

I. The consultation process:

To ensure a transparent, open process and dialogue with stakeholders, CEIOPS published end November 2009 the draft advice for a 10 week long consultation period.

Furthermore, CEIOPS organised on January 7, 2010 a meeting with representatives of major EU and 3rd country stakeholders. The meeting was an opportunity for CEIOPS to present its advice on the requirements relating to equivalence assessments in the context of Solvency II while, at the same time, allowing for early and direct input/orientation from the stakeholders as to the comments to be received.

During the consultation period that ended on 5 February 2010, CEIOPS received 900 comments from 38 stakeholders (EU and 3rd country). CEIOPS has aimed to revise and improve its advice with due consideration to the comments received.

II. CEIOPS' Overarching principles for equivalence assessments:

1. Level of policy holder/beneficiary protection: Fully in line with the spirit and text of the L1 Directive, CEIOPS considers that the 3rd country supervisory system must ensure a similar level of policyholder/beneficiary protection as the one provided in the EEA to be considered equivalent. References to this overarching principle have been inserted in the advice under each Chapter.

2. Equivalence is a flexible process based on principles and objectives: In order to ensure that this similar level of policy holder/beneficiary protection is ensured CEIOPS proposes that the equivalence assessments analyse the ability of the 3rd country supervisory system to meet each of the key Solvency II supervisory principles and objectives. The indicators proposed by CEIOPS in respect of these principles and objectives should only be seen as factors which provide guidance in determining whether the relevant principles and objectives are observed. It has also been further clarified that when assessing a particular principle and objective, every indicator does not necessarily need to be fulfilled.

3. Equivalence is a proportionate process: Based on experience and current practice, CEIOPS notes that in the assessment of 3rd country supervisory regimes, consideration should be given to the adequacy of 3rd country practice in applying the proportionality principle. As such, under each of the Chapters, CEIOPS has advised that the existence of a proportionality principle in the application of regulatory provisions in 3rd country jurisdictions (contingent upon the nature, scale and complexity of the risks inherent in the business) should not be in itself an obstacle or a prerequisite to the recognition of equivalence.

4. Supervisory cooperation – professional secrecy: CEIOPS considers professional secrecy to be fundamental to all supervisory cooperation among EU and 3rd country supervisors. As such, each of the three chapters of the advice includes a harmonised text on principles, objectives and indicators for the assessment of professional secrecy equivalence. Given the sensitivity and importance of this topic, CEIOPS finds that the principle of proportionality does not apply in relation to professional secrecy.

5. Default method for group solvency calculation: The default method for the group solvency calculation, set out in Article 230 (accounting consolidation), requires that related 3rd country undertakings are consolidated applying the Solvency II rules. The equivalence assessment applies solely for the purpose of the deduction & aggregation method under Article 233 (alternative method). CEIOPS notes that the deduction & aggregation method may be used where the Groups Supervisor allows for its application following consultation with the other supervisory authorities concerned and the group itself.

6. Transitional measures: The volume of responses received to the consultation is testament to the importance of the equivalence assessment to 3rd country reinsurers and to internationally active insurance groups. In line with the overall objective of ensuring a smooth implementation of Solvency II, CEIOPS has provided in former CP 52 a solution to be applied if the 3rd country where the reinsurer is headquartered has not been assessed for equivalence by the Commission. Regarding groups, in the absence of a Commission decision, the Level 1 text process foresees that group supervisors can undertake assessments and that consistency will be maintained through the involvement of CEIOPS in the process. Nevertheless the Commission may wish to consider the need for a transitional period in order to integrate the international operations of groups into the Solvency II regime and to allow for a harmonised approach across Europe to internationally active groups to be developed.

7. Process for assessing equivalence: CEIOPS emphasizes that it sees equivalence assessment is an iterative process, in which dialogue and exchange with third countries supervisors plays a crucial role. This aims at allowing for a positive equivalence determination as soon as concrete evidence will have been provided in case some principles and objectives were not initially considered observed.

III. High level comments – an overview:

1. Competitive issues: CEIOPS would highlight that many comments stressed the need to ensure a “level playing field” both at EU and at worldwide level and to prevent additional burdens for EU/3rd country undertakings.

2. Qualified equivalence: The Commission should consider whether the L2 implementing measures could allow for a qualified equivalence finding. Such an approach may be more appropriate and proportionate in certain circumstances, for example where not all aspects of the 3rd country's supervisory regime are relevant for EU supervisory purposes.

3. Reciprocity: Some commentators have noted that a reciprocal approach is extremely important to secure the fairness, objectivity and verifiability of the equivalence assessment. A few of the 3rd country supervisory authorities commenting on CEIOPS draft advice have also recommended reciprocity as a way of preventing inconsistencies in international practice in relation to equivalence assessments.

4. Timing issues: Stakeholders, especially from those 3rd countries with a strong presence in the EU market, have expressed some concerns as to the timing of CEIOPS' advice and most importantly as to the schedule for the first wave of equivalence assessments. Stakeholders also noted that they would prefer to have an initial idea of the final L2 text and argued against assessing equivalence before on grounds of consistency. At the same time, other comments received noted that an equivalence assessment needs to be taken before the implementation of SII in the EEA in order to ensure that by end 2012, the insurance undertakings concerned would find themselves in a more favorable position.

IV. Next steps:

CEIOPS stands ready to assist the Commission in the identification of the 3rd countries that should be included in the first wave of assessments

CEIOPS will also develop L3 guidance on the methodology to be applied in the process of assessing 3rd country equivalence in the context of Solvency II, and will consult further on this.

Moreover, CEIOPS stands ready for your guidance as to ways of further contributing to the discussions on the equivalence related Level 2 implementing measures, namely through participation in the future meetings of the EIOPC and its Solvency Expert Group.

Yours sincerely,



Gabriel Bernardino
CEIOPS Chair