

## Insurance and Reinsurance Stakeholder Group meeting

**13 September 2011**

**Venue: EIOPA, 14th floor, Westhafenplatz 1, 60327 Frankfurt am Main**

### Draft Conclusions and Action Points

10.00	Welcoming by Mrs Michaela Koller, IRSG Chair	
<p><b>Remarks:</b> IRSG Chair welcomes members to third statutory meeting of the Stakeholder Group. Also welcomes Manuela Zweimueller to the EIOPA team as coordinator of the External Relations Unit.</p> <p>EIOPA External Relations coordinator notes the following:</p> <ul style="list-style-type: none"> <li>▪ input of the IRSG is important for the work undertaken by EIOPA in particular in respect of Solvency II development and implementation</li> <li>▪ EIOPA is committed to a smooth functioning of the administrative process and will ensure timely delivery of the agenda and background summary notes.</li> <li>▪ Based on the regulation, EIOPA has to consult the IRSG/OPSG on all regulatory consultation work. The volume of documents to be sent to the Stakeholder Groups will therefore be substantial.</li> </ul> <p>IRSG Chair notes that the group is the main counterparty for EIOPA public consultations and invites EIOPA to present a detailed work plan on SII so as to facilitate planning and organisation of the IRSG work. IRSG Chair also noted that IRSG members should refrain from using EIOPA templates and corporate identity elements to express their own personal opinions.</p> <p><b>Conclusion/Action points: N/A</b></p>		
1.	Approval of the draft agenda ➤ <i>Doc: EIOPA-11-083: Draft agenda IRSG mtg.</i>	Decision
<p><b>Remarks:</b> IRSG Chair submitted the Draft Agenda for endorsement and invited members to put forward proposals for amendments, if any.</p> <p><b>Conclusion/Action points:</b> Draft Agenda is approved including amendment regarding EIOPA update on financial stability.</p>		
2.	Approval of the 31.05.2011 meeting minutes ➤ <i>Doc: EIOPA-11-081: Draft minutes IRSG mtg. - 20110531</i>	Decision
<p><b>Remarks:</b> IRSG Chair submitted the Draft Conclusions and Action Points of 31.05.2011 meeting for endorsement and invited members to put forward proposals for amendments, if any.</p> <p><b>Conclusion/Action points:</b> Draft Conclusions and Action Points of 31.05.2011 meeting are approved without amendments.</p>		

3.	<p>EIOPA consumer protection priorities</p> <ul style="list-style-type: none"> <li>• <i>EIOPA presentation.</i> This focused on EIOPA's Consumer Protection Priorities and its workplan for 2011/12. It included financial innovation, good disclosure and selling practices for variable annuities; consumer trends; Test Achats implications; complaints handling; financial education and literacy initiatives and stock take; IMD Revision. It also outlined the role of CCPFI, the EIOPA committee dealing with consumer-related issues</li> </ul>	Discussion
<p><b>Remarks:</b> Following the presentation delivered by EIOPA representatives, IRSG members engaged in an in-depth discussion as to the orientation and planned deliverables of EIOPA's work in the area of consumer protection.</p> <p>The IRSG requested the efficient establishment of processes that would allow full consumer input that actually delivers tangible outcome for consumers.</p> <p>Comments made highlighted the need to ensure adequate involvement of consumer representatives in EIOPA work as well as in financial sector regulatory action, in general. The IRSG noted the opportunity to act as a platform for improving dialogue between industry, consumer representatives and regulatory bodies as the ESAs' mandate allow for such cooperation to gain a European dimension.</p> <p>In relation to enquiries as to the joint work of ESAs as well as interaction with the National Supervisory Authorities (NSAs), EIOPA Chairperson, Gabriel Bernardino agreed that these tasks are new and ground-breaking. Joint committee work has already led to increased cross-sector cooperation among ESAs. As more work will be undertaken to understand the functioning of this new institutional set-up, EIOPA and its sister ESAs are committed to deliver on these new responsibilities and to provide enhanced protection for EU policyholders/consumers.</p> <p>Other topics covered by IRSG discussion referred to the issue of product design (simplicity versus complexity) as well as usefulness of products. In this context, problems with PPI (payment protection insurance) were raised by some consumer representatives. IRSG members also expressed interest in defining "fairness" and good consumer outcomes (value for money, products do what they say, simpler information) and discussing sales practices (information provided to consumers, incentives for intermediaries, liability issues, etc).</p> <p>In addition, interest was expressed to discuss ADR schemes (Alternative Dispute Resolution) (having regard to the Commission's forthcoming legislative proposal) as well as financial literacy; effective disclosure; the role of earlier product design intervention; the effectiveness of price comparison online website; and the perceived need for convergence of regulatory practice on complaints handling. It was agreed that these topics will require close scrutiny by the Stakeholder Group and close cooperation with the EIOPA relevant unit/working group.</p> <p>With regard to EIOPA's process on delivering on its consumer related priorities, IRSG members noted that more resources need to be allocated to consumer protection/ education areas while building a bridge to the stakeholder groups in other ESA's coordination will pose additional resource challenges.</p> <p>Regular updates of EIOPA work on Consumer Protection were requested on future IRSG agendas.</p> <p><b>Conclusion/Action points:</b></p> <ul style="list-style-type: none"> <li>▪ IRSG members underline the high significance of consumer protection related work undertaken by EIOPA and agree to provide input on future work streams.</li> <li>▪ IRSG members agree to establish a sub-group on consumer protection issues that will closely cooperate with EIOPA on specific matters. EIOPA will invite IRSG members to express their interest to participate in the consumer protection subgroup.</li> <li>▪ IRSG members will inform EIOPA in writing as to their willingness to join the consumer subgroup (email to EIOPA, no later than 30 November 2011). Emails will be sent to EIOPA at <a href="mailto:simona.dascalu@eiopa.europa.eu">simona.dascalu@eiopa.europa.eu</a></li> </ul>		

4.	EIOPA latest financial crisis related actions	Discussion
<p><b>Remarks:</b> As requested by IRSG members, the EIOPA Chairperson provided an update as to the Authorities' latest actions/initiatives in the area of Financial Stability.</p> <p>The EIOPA Chairperson noted that the Authority is closely monitoring latest developments in the financial sector and that it is engaged in close cooperation with its member NSAs as the latter retain full responsibility for undertaking supervision at national level. As such, EIOPA has focused, among others, in collecting information and mapping the actions which were taken by NSAs over the past months. This exercise will provide a solid basis for future EIOPA initiatives to enhance supervisory cooperation at EU level and contribute to efforts of safeguarding financial stability in the EU insurance sector.</p> <p>Following requests for additional details, the EIOPA Chairperson also noted:</p> <ul style="list-style-type: none"> <li>▪ The concept of "emergency" used in the EIOPA/ESRB regulations, has not been defined legally. In fact, the Regulation only provides details on the process to be established and followed in case of a crisis: The power to declare an emergency situation is with the Council, following a request by any of the ESAs, the Commission, or the ESRB (Art. 18). The EIOPA chairman admitted however, that it is a sensitive issue to declare an "emergency" as one must be aware that this might exacerbate a crisis situation.</li> <li>▪ The issue of sovereign debt was discussed, specifically with regard to the standard formula. The EIOPA chairman clarified, that any adaption of the standard formula would be up to the Commission. He furthermore clarified that pillar II would allow for appropriate supervisory reaction.</li> <li>▪ As to ESAs' cooperation in the area of financial stability, the EIOPA Chairperson informed as to enhanced cooperation and information exchange with the banking and securities colleagues as well as the ESRB. The EIOPA Chairperson also noted that from this perspective, the insurance sector is the most resilient in the context of current market conditions</li> <li>▪ The role of interim guarantee schemes was discussed and more effective cross border regulatory action. The challenge of living currently in a Solvency I world was articulated - difficult to achieve consistency and protection of policyholders is paramount. Discussion ensued around Solvency II and its progress/role considering likely economic developments</li> </ul> <p>The IRSG Chair thanked EIOPA for its comprehensive update and noted that the topic is and will remain of keen interest for IRSG members.</p> <p><b>Conclusion/Action points:</b></p> <ul style="list-style-type: none"> <li>▪ EIOPA next financial stability update will be provided in October 2011 meeting.</li> </ul>		
5.	Anti-discrimination	Discussion
<p><b>Remarks:</b> The European Commission representative provided IRSG members and attending EIOPA representatives with a detailed presentation of the "Test d'Achat" case and its implications. The presentation covered the history of the case, a brief explanation of the proceedings during Court of Justice of the European Union (Court) procedure, the Court decision and its effect as well as details of EC planned work in the follow-up to this ruling.</p> <p>More specifically, the EC representative noted:</p> <ul style="list-style-type: none"> <li>▪ Court decision is applicable from the day of its publication in the official journal. The date of application is not dependent on MS initiatives to adapt their national legislation to the Court ruling.</li> <li>▪ The Courts ruling focused on technical/procedural flaw of the Directive and noted that exceptions from the provisions of the Treaty can only be of temporary nature and not permanent. As such, the exception will be terminated as of 21 December 2012.</li> <li>▪ The EC has been closely engaged with all relevant stakeholders before and after the Court ruling and is trying to ensure the necessary legal security for the insurance sector. To this</li> </ul>		

end, the EC intends to publish guidelines so as to clarify how the Court ruling should be interpreted. It is expected that these guidelines would also prove useful for MS who intend to formally bring their legislation in line with the Court ruling. In addition, it is expected that the EC guidelines will also be used by national judges for further orientation if a case is brought before them.

The IRSG Chair underlined and confirmed the EC debriefing as to history and reasoning of the Court of Justice of the European Union and cautioned that a pending legislative proposal on antidiscrimination on the basis of age, disability, religion and sexual orientation is using a very similar wording for the exemption of insurance risk techniques as the one that was criticised and declared invalid by the Court.

A majority of IRSG members also intervened to express their concerns about the potential negative consequences the Court ruling will have for the market and policyholders. IRSG representatives expressed concerns that the ruling might lead to increased levels of insurance premiums and that it would not necessarily lead to fairer consumer outcomes. Academic representatives explained that it is possible for the insurance industry to work without "gender" as a factor, but that it would have an impact on premiums. It was suggested that a definition of discrimination would be helpful to ensure that gender based differentiation could still be used for reserving and technical provisions.

**Conclusion/Action points:**

- IRSG members agreed to dedicate time to discuss the impact of the Court of Justice of the European Union ruling on insurers and consumers. To this end, the IRSG decided to establish a sub-group on anti-discrimination issues.
- EIOPA will invite IRSG members to express their interest to participate in this subgroup. IRSG members will inform in writing as to willingness to join the gender discrimination subgroup (email to EIOPA, no later than 30 November 2011). Emails will be sent to EIOPA at [simona.dascalu@eiopa.europa.eu](mailto:simona.dascalu@eiopa.europa.eu)

6.

Pensions/IORP Review

Discussion

**Remarks:** The EIOPA representatives informed the IRSG on the work undertaken to date as to EC Call for (CfA) Advice on the revision of the IORP Directive.

The EIOPA Chairperson added that the work EIOPA has undertaken to date is driven by the Call for Advice received from the European Commission. In more detail, EIOPA needs to deliver its advice/position with regard to the topics indicated in the CfA and within the deadline set by the Commission.

IRSG members discussed the major challenges associated to the IORP Directive Revision. Some IRSG members highlighted that Solvency II principles would be a good basis for the planned IORP revision. Nonetheless, it was recalled that a cautious approach should be kept in the eventual application of the Holistic Balance Sheet approach to IORPs, particularly with reference to its pro-cyclicality, which may deepen the effects of the on-going financial and sovereign debt crisis. It was argued that a holistic balance sheet approach would equally work for IORPs provided that their specificities are taken into account.

The risk of regulatory arbitrage was highlighted in case the IORP revision would ignore developments such as Solvency II in competing sectors. IRSG members equally highlighted the need for appropriate information and suggested that the UCITs information sheet would need to be adapted to an IORP context. IRSG representatives from central and Eastern European countries explained that some IORP regimes in these countries are rather considered public schemes and would therefore not fit into the IORP regulatory concept.

The IRSG decided that this legislative process which is now at its starting point will be closely followed.

**Conclusion/Action points:**

- EIOPA will deliver an update on the IORP Revision work in the joint IRSG/OPSG meeting in October 2011.

7.	Solvency II and Omnibus II – update	Discussion
<p><b>Remarks:</b> EC representative updated IRSG members as to state of play on the finalisation of the Solvency II framework.</p> <p>Details were provided as to developments since the May IRSG meeting i.e. work undertaken by the Commission, Council and European Parliament; current timeline of decision making procedures were explained.</p> <p>IRSG members were also informed that according to the latest estimation OMD II should be published in the Official Journal no later than 3 months after the EP plenary decision (accounting for time required for translation). Following the publication of OMD II, the Commission will then table its Solvency II L2 – Implementing Measures proposals on which the European Parliament can use up to 6 months for the endorsement process. While this timeline and sequence of actions needs to be observed in any case, it could potentially further extend if the draft ECON Report on OMD II in which the rapporteur suggests that a number of Delegated Acts (DA) be re-qualified as Regulatory Technical Standards (RTS) would be (partially or fully) adopted. This proposed re-qualification would have the effect that EIOPA would have to re-run the complete level 2 consultation work. The EIOPA executive director underlined that EIOPA would re-consult the EC texts unchanged – as a time saving measure - if this requalification from DA to RTS would be agreed upon in OMD II. The EC is currently working towards the finalisation of the L2 text and will also pursue a related Impact Assessment exercise which should be finalised by the time OMD II is published in the Official Journal.</p> <p>An EIOPA representative presented then an outlook on the current planning of the Authority with regard to its deliverables for finalising the SII framework<sup>1</sup>.</p> <p>The IRSG Chair and members welcomed the updates and welcomed the statement that EIOPA would intend to make use of the level 2 work undertaken to date by the EC.</p> <p>The timetable was viewed as optimistic and challenging and some industry representatives stressed the need for adequate preparatory time. From a consumer perspective it was furthermore noted that while EC is clearly running its impact assessment studies with a strong consumer perspective embedded in them, it would be beneficial to use more accessible language in these studies which to date are quite technical and require advanced knowledge of terms and concepts re Solvency II.</p> <p>With regard to the future role of the IRSG for the EIOPA 2012 public consultation campaigns, both IRSG members and EIOPA representatives agreed that efficiency is imperative. As such, based on current indications available in the draft OMDII proposal(s), a tentative identification of topics where IRSG opinion is to be provided will prove beneficial.</p> <p><b>Conclusion/Action points:</b></p> <ul style="list-style-type: none"> <li>▪ For the 2012 work plan, the IRSG will identify issues of enhanced interest where it will provide its opinions with priority. EIOPA will assist in this process, to the extent possible as in line with its establishment Regulation by providing as soon as possible to IRSG Chair and Vice-Chair an overview of planned 2012 consultations</li> <li>▪ As per art. 37 of the Regulation 1094/2010 EIOPA shall consult the IRSG on all SII related regulatory proposals which will be subject to a public consultation procedure.</li> </ul>		
8.	EIOPA Equivalence Assessments of Swiss, Bermudan and Japanese supervisory systems	Presentation
<p><b>Remarks:</b> The EIOPA Equivalence Committee Chair updated IRSG members as to the work undertaken in 2011 in order to establish SII equivalence of the CH, BM and JP supervisory regimes.</p> <p>The presentation provided details as to the main concepts re equivalence work, actions under-</p>		

<sup>1</sup> Presentation available at: <https://eiopa.europa.eu/about-eiopa/organisation/stakeholder-groups/insurance-reinsurance-stakeholder-group/meetings/index.html>

taken, timeline, resources as well as next steps for EIOPA and EC in order for the Equivalence Decisions to be put in place as follows:

- EIOPA provides its Final Advice to the EC re equivalence of Bermudan, Japanese and Swiss supervisory systems (end October 2011).
- EIOPA revises its Advice following L2 publication
- European Commission initiates procedure for decision on the SII equivalence of these third countries (2012)
- European Commission decision to be published in Official Journal (before SII implementation deadline).

Equivalence Committee Chair also noted excellent collaboration and work-flow with the three authorities – FINMA, BMA and JFSA and underlined that current reports have benefited greatly from this cooperation both during the desk-based assessment periods and the on-site visits.

IRSG Chair thanked EIOPA and Equivalence Committee Chair for all the work and efforts and noted that these reports are a significant step forward towards having practical effects of equivalence in the context of Solvency II.

**Conclusion/Action points:** The IRSG members took note of the report and requested regular up-dates.

9.	Next meetings of IRSG – draft 2011/2012 calendar proposal	Decision
<p><b>Remarks:</b> IRSG Chair reminded members as to significant workload the IRSG will undertake in the coming year and proceeded to present the proposals for 2011/2012 future meeting dates.</p> <p><b>Conclusion/Action points:</b> IRSG members agreed to the following calendar:</p> <ul style="list-style-type: none"> <li>▪ <b>2011:</b> 12.12.2011 (FFM)</li> <li>▪ <b>2012:</b> 14.03.2012; 24.05.2012; 27.06.2012; 18.10.2012 (FFM)</li> </ul>		
17.00	Scheduled end of the meeting	