

## Insurance and Reinsurance Stakeholder Group meeting

24 May 2012

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

### Conclusions and Action Points

List of participants:

IRSG: Michaela Koller (IRSG Chair), Kay Blair (IRSG Vice-Chair), Rym Ayadi, Mads Braüner, Yannick Bonnet, Hugh Francis, Seamus Creedon, Paul Carty, Francis Frizon, Lars Gatschke, Pilar González De Frutos, Helmut Gründl, Maria Heep-Altiner, Raffaella Infelisi, Robert Jones, Asmo Kalpala, Marcin Kawiński, , Damien Lagaude, Jérôme Lecoq, Baiba Miltovica, Gerard van Olphen, Daniela Weber-Rey, Chris Verhaegen and Alexander Sadovski.

EIOPA: Gabriel Bernardino (EIOPA Chair), Carlos Montalvo (EIOPA Executive Director), Daniela Rode (Director of Regulations), Justin Wray (Head of Policy Unit), Giulia Conforti, Laurent Etori, Sandra Hack, Dora Iltcheva, Kai Kosik, Timothy Walters, Manuela Zweimueller.

EIOPA Working Groups: Fausto Parente, Chair of EIOPA Insurance Group Supervision Committee (IGSC) and David Revelin, Vice-Chair of EIOPA Internal Governance, Supervisory Review and Reporting Committee (IGSRR). European Commission: Ulf Linder, Insurance and Pensions Deputy Director – DG Internal Market and Services

10.30	Welcoming by Mrs Michaela Koller, IRSG Chair	Type
1.	Approval of the draft agenda	Decision
<p><b>Remarks:</b> IRSG Chair welcomes members to seventh statutory meeting of the Stakeholder Group.</p> <p><b>Conclusions and action points:</b> Draft Agenda is approved.</p>		
2.	Approval of the 14.03.2012 meeting conclusions and action points	Decision
<p><b>Remarks:</b> A couple of drafting suggestions were made on Item 6 (IORPs CfA Update) and on the mandate of the Subgroup on Long Term Guarantees, in addition to the proposal that the list of attendees should be added to the document.</p> <p><b>Conclusions and action points:</b> Draft Conclusions and Action Points of 14.03.2012 meeting have been adopted.</p>		
3.	<b>EIOPA Consultation on EC Call for Advice on the review of FI-COD</b>	Discussion
<p><b>Remarks:</b> Kai Kosik, EIOPA expert, made a brief presentation on the Joint Consultation Paper on the fundamental review of the Financial Conglomerates Directive.</p> <p>This consultation covers three broad areas:</p> <ul style="list-style-type: none"> <li>• The scope of application</li> <li>• The Group wide internal governance requirements</li> <li>• Sanctions and supervisory empowerments</li> </ul>		

The Joint Committee issued eight recommendations in response to questions in the call for advice for the review of the FICOD, including the widening of the scope of supervision, enforcement regime towards ultimately responsible entity within the financial conglomerate and the framework of supervisory powers provided by the FICOD.

The Commission will offer a public hearing on 28 June in Brussels. This consultation is open until 13 August 2012. Relevant documents are available on EIOPA website: <https://eiopa.europa.eu/consultations/consultation-papers/index.html>

The following comments were shared by IRSG members:

- The review of this Directive is very important and will have a major impact on corporate law.
- It is also important from a financial stability point of view: given the existing links between IORPs and the financial markets it would be a mistake to exclude IORPs from the Directive's scope.
- With regard to enforcement and supervision, the relevance of cross-border cooperation needs to be taken into account.
- SPV should also be included in the scope of FICOD

**Conclusion/Action points:**

- It was agreed that Rym Ayadi would collect responses from IRSG members and prepare a draft Opinion to be endorsed by IRSG. EIOPA to support Rym with the process & timeline.

4.	<b>EIOPA Peer Reviews (Art. 30)</b>	Discussion
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**Remarks:** EIOPA representative, Ms. Dora Iltcheva, updated members on the Peer Review Process conducted by EIOPA. Presentation is available on EIOPA website, IRSG section, 24 May meeting: [https://eiopa.europa.eu/fileadmin/tx\\_dam/files/Stakeholder\\_groups/insurance-reinsurance/2012-05-24/presentations/EIOPA\\_Peer\\_Reviews.pdf](https://eiopa.europa.eu/fileadmin/tx_dam/files/Stakeholder_groups/insurance-reinsurance/2012-05-24/presentations/EIOPA_Peer_Reviews.pdf)

Remarks by Carlos Montalvo: the peer review is a tool to encourage convergence among supervisors, having in mind the single market and the harmonised legislation being implemented.

The peer Review projects conducted by EIOPA:

**2009 – 2010**

- ✓ Peer Review on application of the General Protocol
- ✓ Peer Review on application of the Budapest Protocol

**2011 – 2012**

- ✓ Peer review on the pre-application of Internal Models
- ✓ Peer review on the supervision of Branches of EEA Undertakings
- ✓ Peer review on the supervision of IORPs (art. 13-14 of IORP Directive)

**2013**

- To be discussed by the Board of Supervisors, usually three areas in the fields of insurance, occupational pensions and financial stability.
- EIOPA will approach IRSG and OPSG for concrete suggestions on a list of topics currently being discussed by the EIOPA Review Panel, to contribute to the identification of key issues on which the peer review should focus.

Support was shared among IRSG members for the added value of Peer Reviews. In addition,

the following comments were provided to EIOPA:

- Monitoring the areas of divergence in application – what are the instruments to tackle this:
  - Gabriel Bernardino’s response: in case of conflicts with regard to the convergence of practices as well as for the breach of union law, EIOPA has powers on mediation. Peer Reviews are valuable tools for promoting convergence. Past peer reviews showed not only best practices but also allowed the identification of gaps and this is a key factor to trigger change.
- On best practices identification (by whom best practices are identified?)
  - Gabriel Bernardino response: the peer reviews are conducted by high-level representatives from national authorities and the conclusions from peer reviews are discussed and endorsed by the Board of Supervisors.
- Peer review on pre-application of internal models. The topic was considered very positive. A question was asked about when the results will be disclosed.
  - EIOPA response: currently, communication with supervisory authorities through meetings, telcos and individual written reports is currently being conducted. The final report will be drafted in December and presented to the Board of Supervisors (BoS) in Q1 2013. The result from the peer review is a gradual process of discussing openly each authority’s practices and influencing each other through good practices. The final report will contain conclusions for consideration and further action by the Board of Supervisors.

IRSG members also made some suggestions to be considered in the three areas for the next choice of peer review topics:

- Article 9 of the EIOPA Regulation: Consumer protection –methodologies used by supervisory authorities to identify and understand the consumer perspective.
- Capital add-ons, Operations of Colleges, Supervision of insurance Mediators, Supervisory Reporting.

**Conclusion/Action points:**

- The Review Panel will request further views from the IRSG regarding the peer review projects in 2013 at a meeting in early autumn.

5.	<b>EIOPA Impact Assessment procedures</b>	Discussion
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**Remarks:** EIOPA representative, Dora Iltcheva, presented EIOPA’s approach to assess the impact of new regulation/policy measures.

Among the main points raised during the presentation:

- Advantages of doing Impact Assessment (IA)
- Quality Assurance for Technical Standards
- The 8 steps: problem identification, policy objective, policy options, analysis of their impacts, identification of the preferred policy option(s), draft policy proposal (and IA report), Publishing the responses received and giving public feedback and keeping the policy under review.
- Chart with the Benefits & Costs of each policy option
- TOOLS: Policy Options Overview Template

The floor was opened for IRSG members to react on the topic and the following comments were made:

- Could EIOPA indicate the relevance of IA for individual stakeholder groups, especially consumers, unions, etc.?
- How is the impact on SMEs calculated? Do you look at Financial Stability aspects?
- How does EIOPA quantify consumer, social benefits?
- Views from Ulf Linder (EC): EIOPA is conducting the impact assessment on the elements which EIOPA develops in addition to the texts at Level 1 and Level 2. Therefore EIOPA IA should be proportionate. EIOPA response: the analysis of impact is conducted on three major players: industry companies, consumers and supervisors (both indirect and direct impact on these affected parties). With regard to the impact on SMEs, EIOPA looks at proportionality aspects with great care.

Impact Assessment may be a challenging exercise due to the specifics in measuring benefits, also with regards to consumer and social aspects.

The impact assessment conducted on Technical Standards and Guidelines will be incremental for the aspects developed by EIOPA after L1 and L2 and it will be proportionate to the topics analysed. It will all be provided in the consultation as a single document containing analysis on individual areas and a cumulative perspective as well.

**Conclusion/Action points:**

- IRSG Chair welcomed the explanations and the description of the IA procedures presented.

6.	<b>EC Solvency II update</b>	Discussion
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**Remarks:** European Commission representative, Mr. Ulf Linder, updated IRSG members as to state of play on the finalisation of the Solvency II framework. Details were provided as to developments on L1, L2 and L3.

- L1 - OMD II: In March 2012 the European Parliament decided to increase the scope of the discussion on what should be delegated acts vs. regulatory technical standards and guidelines. The issue at political level is between the right of initiative (pursued by the European Commission) and the need to give EIOPA a role on technical level/ knowledge (pursued by the European Parliament).

Following amendments of the Directive's contents are being discussed:

- On equivalence, major discussion is on the length of transitionals (5 or 5+1 years). Regarding the Solvency Capital Requirement (SCR), a certain flexibility (a few years) is desired.
- On supervisory reporting, the European Parliament does not want to overload small companies.
- On recovery period, proposal to extend it to 7 years; EIOPA disagrees.
- On Sovereign debt: EC wants to include a risk assessment of sovereign debt; Member States disagree.

The trialogue (between EP, EC and Council) is supposed to conclude by end of June (still under the Danish Presidency) and it is expected that the EP plenary vote will take place in July 2012.

- L2: to be adopted as a package as delegated acts (not as regulatory implementing standards) after the legal check.
- Timeline: It is uncertain whether OMDII will be published in the Official Journal by 31.10.2012 (most probably by end 2012). This could lead to cessation of Solvency I and the obligation to implement the original SII framework directive while the changes introduced through Omnibus II would not yet have come into force. To avoid this, a so-called be a 'quick fix' directive to amend the transposition and application dates is supposed to be en-

dorsed:

- The Directive would then need to be transposed in 30.06.2013 by Member States
- The Directive would then need to be applicable as of 01.01.2014 for EU companies.

Following the publication of OMD II, Level 2 is expected to be published in April 2013.

- **L3:** The Implementation report should follow in July 2013 and between July and September the European Commission should publish the Technical Standards and Guidelines.
- EIOPA Executive Director's remarks: Mr. Montalvo stressed the fact that, without the publication of L2 in the Official Journal, EIOPA cannot consult on Technical Standards and Guidelines (TS & G) – for which a minimum period of 8 months is needed to complete the process:
  - 12 weeks for consultation
  - 2 months to revise the TS & G (and deal with +/- 20.000 comments)
  - 3 months for endorsement by the EC, including the objection period.

If further delays occur, then, the estimated timeline can no longer be ensured.

In addition, he informed that the European Parliament is trying to provide the legal basis for EIOPA to carry out the new additional tasks foreseen in OMD II (deriving risk free rates for Member States, work on equivalence, etc.).

The floor was opened for reactions by IRSG members:

- It is difficult to comment on L3 if L2 is not officially available.
  - EC response: the Legal Service is not in favour to publish Level 2 on the website. Once the trialogue discussions are completed, L2 will be updated, although publication to a broader public is uncertain.
- Challenging timeline:
  - If companies need to implement SII, then this will necessarily have to happen in December 2013.
  - As some of the TS & G would be derived from the L2 implementing measures, this would imply that certain discussions may only start after 8 Months.
- On Long Term Guarantees: this issue should not be underestimated, as consumers may be confronted with the fact that companies no longer provide such products.

**Conclusions and action points:** IRSG Chair welcomed the debate and thanked the European Commission and EIOPA for the early-on information.

13.00	Lunch (45 minutes)	
7.	<b>Long Term Guarantees</b>	Discussion

**Remarks:** EC representative, Ulf Linder, updated members on the developments on LTG. The European Commission is aware of the need to address the problem of products of a long term nature in the Solvency II framework. The main measures/elements currently under discussion are:

- **Counter-cyclical premium (CCP):** mechanism to identify spreads in the market and to reduce their impact. Discussions on what indicators, specific formulas, how to be triggered, etc.
- **Matching adjustment:** mechanism to reduce artificial volatility; only to be used under specific conditions.
- **Extrapolation of LT interest rate:** on-going discussion on duration & discount rate.

The compromise package is supported by Member States, but not by the European Parliament, who proposed a more restrictive approach to mechanisms 1 and 2. Nonetheless, the three parties are striving to reach a workable solution.

EIOPA remarks by Carlos Montalvo: EIOPA has contributed to the debate by providing with a

staff note, in which the main messages were:

- EIOPA does not want to intervene on political discussions
- The aim is to ensure the availability of LTG products and the role of insurance as long term investor
- The framework should avoid disruption with existing practices
- On extrapolation: insurers should be able to invest in LT assets
- On the recovery period: 7 years were questioned (should be rather in line with the economic cycle).
- EIOPA welcomes the Impact Assessment and a review looking forward. Enhanced disclosure, such as on technical provisions has implications on capital requirements.

IRSG chair reminded the audience that a subgroup on LTG had been established and that the general debate should focus on orientation, guidance and timeline for the mandate of the subgroup.

The floor was opened for comments and questions from IRSG members:

- One of the biggest issues is in the back-books: the different valuation of sovereign assets; the duration of insurance liabilities is longer than the investments. How will the transition from SI to SII be managed?
- On the proposed mechanisms: a uniform CCP across Europe is irrelevant due to the different nature of LTGs in Member States; extrapolation is fine and matching adjustments is a valuable tool.
- A sound framework is needed soon if we want to maintain the annuities business, otherwise we risk going back to the equalisation reserve type.
- Industry views are mainly in favour of a market oriented system, such as Solvency II. When compared with Solvency I, the advantages are that new business will align with capital requirements. However, the critical aspects are the implementation (different regimes in the books), the pricing volatility in the products and the potential shift from LTG to certain unit link products, where the market risk is carried by consumers. With regard to the difficulty in finding a CCP formula that is valid across EU: should there be a national solution?
- Gabriel Bernardino's remarks: the political commitment is still to apply the same level of confidence (VaR of 99,5%) for all products. However, economic reality has shown the current downside of spreads, LT interest rates and sovereign debt. A mechanistic formula in the CCP would not solve the issue for all Member States. The two options left are to change the Directive now or to re-discuss the level of confidence. This has an implication from a Financial Stability view point and from a consumer perspective. EIOPA should be trusted to act in the best interest of consumers and as a granter of financial stability in crisis situations.
- The Subgroup should not only focus on the technical debate but provide examples for non-experts on how the proposed mechanisms work.
  - Gabriel Bernardino's remarks: a suggestion for the subgroup could be to prepare a stock taking exercise of LT products – a snapshot of the different approaches in the Member States. The analysis of consumer needs and what products are available in the market would bring more benefit than the technical detail.

Also EIOPA Committee on Consumer Protection and Financial Innovation (CCPFI) will develop an initiative on impact on SII products, for which the IRSG input is welcome.
- IRSG members were asked to indicate whether they are interested in leading the LTG subgroup. Hugh Francis volunteered for this task.

### **Conclusions and action points:**

IRSG Chair welcomed the discussion on this topic and invited Hugh Francis to draft the mandate for the Subgroup on LTG, which should try to address the broader policy rather than technical detail.

8.	<b>EIOPA Presentation on Solvency II - Governance</b>	Discussion & feedback from IRSG
<p><b>Remarks:</b> David Revelin, Vice chair of the IGSRR (Internal Governance, Supervisory Review and Reporting Group), outlined the main aspects of the EIOPA guidelines on Systems of Governance.</p> <p>The following range of points were made by individual members of the IRSG, but do not present a coordinated common approach by the entire group on the materials circulated on governance:</p> <ul style="list-style-type: none"> <li>• Appreciation was expressed for the clarity and usefulness of the nutshell notes drafted by EIOPA which served as clear outlines of the topic and issues. (It was mentioned that this compares favorably with the materials provided by the other ESAs).</li> <li>• The guidelines themselves were also considered to be clearly written.</li> <li>• Support was expressed for the substance of the guidelines, which should help companies to have effective internal discussions of the risks they face and enable behavioral and cultural change with regard to risk management.</li> <li>• The use of the concept of the Administrative, Management or Supervisory Body (AMSB) does not provide clarity. It was also noted that different terms were used at different times. For example, persons who effectively run the undertakings, holders of key functions, those working within key functions.</li> <li>• Wherever possible the terminology in other sectors should be built upon, for example, the CRD IV uses the term 'Management Body' and not AMSB.</li> <li>• It is important to strike the balance between "formal requirements" and the encouragement of good practice: Too much detail could be counterproductive and result in a 'box-ticking' exercise. The guidelines are perceived as excellent educational material; however cultural change needs more than technical compliance.</li> <li>• Emphasis was placed on the importance of behavioral change triggered by corporate governance. Creating appropriate behavior/culture is a principal task of the Board as much as applying particular systems and structures. Good corporate governance is, however, not only about adapting organizational structures.</li> <li>• It was stated that there is a tension between entrepreneurial freedom and regulation and that in this regard the draft guidelines provide too much detail which will result in 'box-ticking' compliance by insurers. The requirements should be short and more principles based and encourage firms to think how to improve their behavior and culture.</li> <li>• "Guidelines" for professional knowledge and education for the key functions (risk management, actuarial, compliance, internal audit) should be established by the professions themselves. Otherwise regulators will set out the requirements.</li> <li>• The remuneration policy should not violate interests of the policyholder.</li> <li>• The guidelines suggest that the Chief Risk Officer (CRO) needs to sit on the board. This requires serious consideration, since by being on the board they would share responsibility for all the actions of the Board when in fact an important part of their role is to challenge what the Board decides.</li> <li>• The special case of finance should be recognised and the magnitude of the risks being managed. Many problems are caused by poor administration/management.</li> <li>• A major challenge is to have board members, in particular independent board members, who are fit and proper whilst having a sufficient understanding of the risks that the company faces.</li> <li>• Recommendation was issued to learn from other industries which experienced that there is an optimum level of control points and that the more control points have to be observed and 'ticked off', sensitivity towards risks even decreases.</li> </ul> <p>A number of specific questions were raised by IRSG members:</p>		

- Whether the implementation of the ORSA is only the responsibility of the AMSB or whether it is a broader responsibility?
- Whether the guideline on underwriting by an intermediary, was intended to mean that every broker or tied agent is covered by this guideline?
- The meaning of the “comply and explain” principle and how the guidelines will interact with local requirements for corporate governance in member states.

The vice chair of the IGSRR responded to the points made:

- He pointed out that the guidelines cover a wide range of topics and as a result he does not consider that they were overly detailed. Further, the guidelines have often been drafted in response to the requests from/needs of the industry and therefore are for their benefit (as well as for supervisors). A distinction also needs to be made between the globally active large undertakings and smaller, local players. The latter rather prefer a higher level of details as this helps them with implementing the guidelines in practice and prepare for supervisory requirements.
- The use of terminology, such as the AMSB is based on the Directive Text. This is therefore not a matter for discussion at this stage.
- The guideline is not supposed to request a CRO on Board level. The requirement is for someone on the Board to oversee risk management. This does not mean the CRO actually sits on the Board. The guidelines will be clarified on this aspect.
- The ORSA report must be approved by the AMSB but it will be implemented in practical terms by the risk management function. Details on the ORSA are provided in separate guidelines on the ORSA which have been publicly consulted upon already in December last year.
- How implementation of the guideline is checked depends on supervisory practice. It is a vital role of the supervisor to ensure that documented company policies are implemented in practice and on-site inspections are a crucial tool in this regard to challenge this.
- As for intermediaries, the extent to which they are subject to the requirements of the guidelines depends on the nature of their role. It is important that the same types of controls are in place irrespective of whether a function (such as underwriting) is performed by the company or whether it is performed by third party/outsourced.
- In response to the question on the procedure of ‘comply or explain’, the Executive Director of EIOPA explained that both undertaking and supervisors would have to either comply with the guidelines or explain why it was not appropriate for them to comply, for example if they already have equivalent requirements/provisions in place.

**Conclusions and action points:**

- The above feedback expressed by individual IRSG members was collected by EIOPA and –upon agreement of the IRSG Chair and Vice Chair- it will be provided for information to the Board of Supervisors meeting in June.

9.	<b>EIOPA Presentation on Solvency II – Group supervision</b>	Discussion & feedback from IRSG
<p><b>Remarks:</b> A presentation was given by Fausto Parente, Chair of the Insurance Group Supervision Committee (IGSC), outlining the topics of (i) supervisory colleges and (ii) Intra-group transactions and risk concentration.</p> <p>Kay Blair, IRSG vice chair, thanked the IGSC Chair for the clear and concise presentation, and in particular for explaining the role of supervisory colleges.</p> <p><b>Conclusions and action points:</b></p> <p>No further comments were received so far during the May IRSG meeting. EIOPA has invited IRSG members to provide written comments via e-mail until the next IRSG meeting on 27 June.</p>		



10.	<b>EIOPA Presentation on Solvency II – Finite Reinsurance and SPVs</b>	Discussion & feedback from IRSG
This point could not be addressed and will be presented at the next meeting in June.		
11.	<b>IRSG organisational item:</b> <b>Approval of IRSG Work Plan 2012-2013</b> <b>Approval of mandates from the Subgroups</b>	Discussion & decision
<p><b>Conclusions and action points:</b></p> <ul style="list-style-type: none"> <li>➤ The IRSG Work Plan for 2012-2013 was approved for publication. Subsequent reviews will be considered in due time.</li> <li>➤ The mandates on Governance and Consumer Protection were approved and published on EIOPA website, IRSG section: <a href="https://eiopa.europa.eu/about-eiopa/organisation/stakeholder-groups/insurance-reinsurance-stakeholder-group/meetings/index.html">https://eiopa.europa.eu/about-eiopa/organisation/stakeholder-groups/insurance-reinsurance-stakeholder-group/meetings/index.html</a></li> <li>➤ The mandate on Reporting will be provided by Thomas Behar for the June meeting, in addition to the mandate on LTG.</li> </ul>		
<p><b>AOB</b></p> <ul style="list-style-type: none"> <li>• Briefing by Carlos Montalvo: <b>Impact on budget</b> <ol style="list-style-type: none"> <li>1. Economic restrictions in the draft budget for 2013 will affect EIOPA deliverables in different areas, including the support to Stakeholder Groups. The draft EIOPA Work Programme for 2013, which also includes the tasks which can no longer be pursued, will be sent to the IRSG. Regular updates on the evolution of budget will follow.</li> <li>2. EIOPA is running a self-assessment exercise, as part of the ESAs review, for which the opinion of IRSG is welcomed.</li> </ol> </li> <li>• Briefing by IRSG chair: <b>Initiative by ESMA</b> ESMA Stakeholder group has expressed interest in cooperation in different areas, including: exchange of agendas and documents, working on common topics: market conduct, PRIPS, etc. However, such cooperation would not be covered by the EIOPA regulation, therefore no means for compensation or additional resources could be granted by EIOPA. The floor was opened to gather opinions from the audience: <ul style="list-style-type: none"> <li>○ Carlos Montalvo: so far EIOPA as well as the EC have much benefited from sectoral expertise (through OPSG and IRSG).</li> <li>○ A subgroup may be established to decide on the topics.</li> <li>○ In principle this is an excellent idea, but the question on the added value on top of the existing mechanism remains, as well as the impact on the commitment in the current task.</li> <li>○ IRSG members who are reimbursed by EIOPA indicated that it would be impossible for them to participate in a joint meeting with the ESMA stakeholder group if their expenses were not to be reimbursed.</li> </ul> </li> </ul> <p><b>Conclusions and action points:</b></p> <p>The IRSG should seek further clarification from ESMA stakeholder group regarding objectives and areas of joint activities before proceeding. This initiative/cooperation should be pursued only if the participation by all IRSG members would be guaranteed.</p>		
Next meeting is scheduled on 27 June.		
16.00	End of the meeting	