



Working Group State Supervision

**III. AIDA Europe Conference
Amsterdam, 26 May 2011**

Agenda

- 12.30 p.m. **Introduction** (Dr Gunne W. Bähr, Germany, Dr Ferenc Kiss, Hungary)
- 12.45 p.m. **Topic 1: The new Corporate Governance Rules under the Solvency II Directive**
- 1) **Charles Rix**, Hogan Lovells International LLP, London: *"The principle-based regulation in the UK and its implication on the Solvency II Directive"*.
 - 2) **Michael Smith**, DLA Piper, Paris: *"Implementation of the Solvency II Directive in France"*.
 - 3) **Berry Jonk-van Wijk**, Houthoff Buruma NV, Rotterdam: *"Solvency II: A different way of thinking – Recent developments in the Netherlands"*.
 - 4) **Dr. Hanno Goltz**, Oppenhoff & Partner, Cologne: *"Steps of implementation of the Solvency II Directive in Germany"*.
 - 5) **Christian Felderer**, General Counsel, SCOR Services Switzerland Ltd., Zurich: *"Governance and Solvency II and the Swiss Perspective"*.
 - 6) **Pablo S. Cereijido**, Marval, O'Farrell & Mairal, Buenos Aires: *"The Solvency II Directive and its impacts on the Mercosur countries (Argentina, Brazil, Uruguay and Paraguay)"*.
- Topic 2: Presentation by student prize-winner - Bozena Hagen**, European Institute of the University of Basel: *"Establishment of EIOPA - Risks and Challenges for State Insurance Supervision in the EU"*
- 14.30 p.m. Discussion
- 14.45 p.m. Questionnaire, next meeting, topics for the next meetings etc.

Introduction

- New Corporate Governance Rules – Key objective of the European Commission
- Pillar I vs. Pillar II and III?
- CEIOPS Advice: System of Governance dated October 2009 (former CP 33)
- Green Paper of the Commission
- CEIOPS Proposal for guidelines – system of Governance dated January 2011
- Status in the different jurisdictions?

Introduction

Corporate Governance is a key issue of the European Commission in the scope of financial services

"Proper risk management must be at the core. We need stronger corporate governance, better internal control... and supervisors should be able to step in and act if institutions become too complex to supervise."



Michel Barnier, EU Commissioner,
May 2010

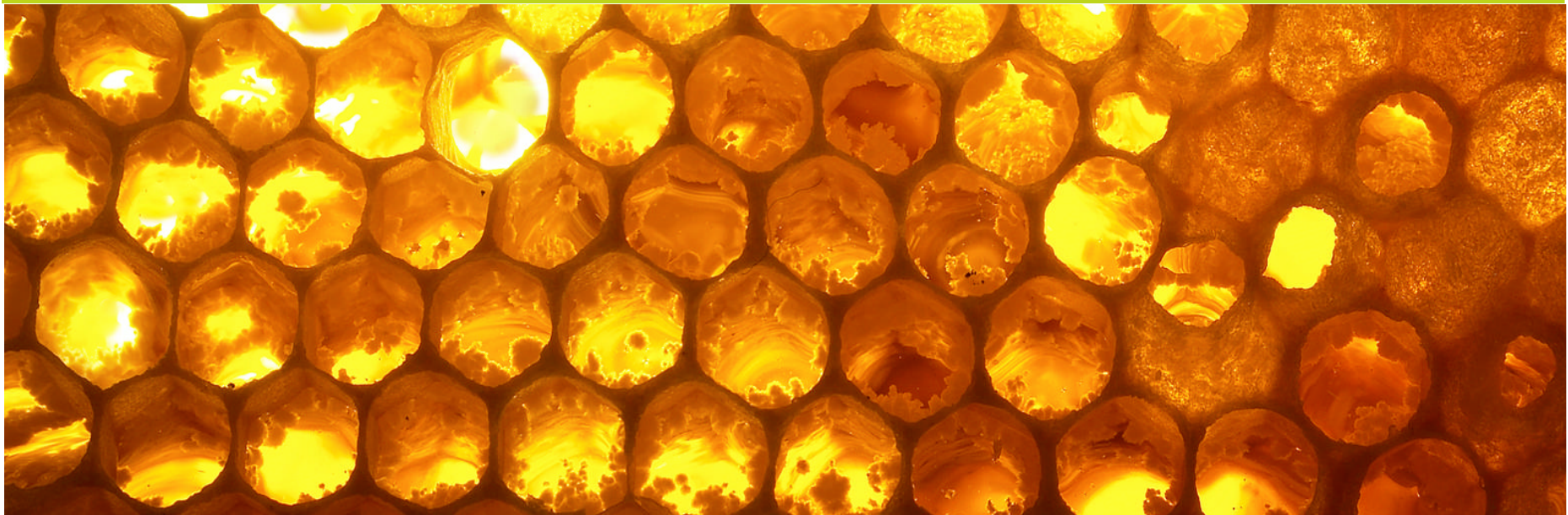
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The new Corporate Governance Rules under the Solvency II Directive: Principles based regulation in the UK and its implications for the Directive

Charles Rix, Partner, London

26 May 2011



Overview of talk

- Current governance for UK insurance companies
- How will UK governance change as a result of Solvency II?
- The impact of the financial crisis on corporate governance
- What do we mean by principles based regulation?
 - light-touch or tailored regulation?
 - outcomes focused?

The need for an effective system of governance

"Some risks may only properly be addressed through governance requirements rather than through the quantitative requirements reflected in the Solvency Capital Requirement. An effective system of governance is therefore essential for the adequate management of the insurance undertaking and for the regulatory system."

Recital 29 of the Solvency II Directive

What does the Directive say about governance?

- "All insurance and reinsurance undertakings [must] have in place an effective system of governance which provides for the sound and prudent management of the business."
- "[The governance] system shall at least include an adequate transparent organisational structure with a clear allocation and appropriate segregation of responsibilities and an effective system for ensuring the transmission of information."
- "The system of governance must be proportionate to the nature, scale and complexity of the operations of the undertaking."
- Persons who run an undertaking must be fit and proper

Current governance for UK insurance companies

- The Tiner Reforms (2004): similarities with Solvency II
 - the Equitable Life crisis
 - Individual Capital Assessment: emphasis on risk management and market consistent reserving consistent with Solvency II
 - ICA similar to Own Risk and Solvency Assessment (ORSA)
 - Approved Persons regime
- Regulatory supervision
 - ARROW visits
 - risk mitigation programmes
 - Individual Capital Guidance (ICG)
 - section 166 reports
- ICG may specify capital add-ons to mitigate poor governance

UK Codification of Directors' fiduciary duties

- Codification to give Directors a clear, authoritative statement of their duties
- Introduced concept of enlightened shareholder value
 - "... directors will not be successful in promoting the success of the company if they focus on only the short-term financial bottom line. Successful companies see business prosperity and responsible business behaviour as two sides of the same coin." *Lord Sainsbury in the House of Lords (2006)*
- Shareholders' right to sue directors expanded
 - wrongdoer control and misappropriation of company's assets not required
 - case can be based on negligence or breach of duty
 - but: no flood of litigation

How will UK governance change as a result of Solvency II?

- A more prescriptive regime
 - internal independent audit function required by the Directive
 - the actuarial function: activities listed in the Directive
 - outsourcing: criteria listed in the Directive
 - internal model may only be approved if internal risk management and reporting is adequate
- New requirements for general insurance companies
 - requirement to appoint an actuary
 - establishment of risk management and compliance functions
- Emphasis on written policies
 - required for risk management, internal control, internal audit and outsourcing

How will UK governance change as a result of Solvency II?

- Disclosure: use of "market discipline"
 - annual public disclosure of solvency and financial condition must include a description of the system of governance and an assessment of its adequacy for the risk profile of the undertaking
 - capital add-on will not be guidance and will be published
- Greater emphasis on Group issues
 - acknowledgement that non-regulated companies can impact regulated activities
 - outsourcing criteria apply to internal as well as external outsourcing
- "Tone at the top"
 - CEIOPS advice: undertakings must have an organisational culture that enables and supports the effective operation of the governance system

The impact of the financial crisis on corporate governance

- Broad agreement that although corporate governance did not directly cause the crisis, there is evidence that the lack of effective control mechanisms contributed significantly to excessive risk-taking by financial institutions
- The ICA system helped UK insurance companies survive the crisis
- Key governance changes identified
 - risk management considerations to be embedded in remuneration policies to avoid incentives for risk taking
 - more effective shareholder influence over corporate strategies
 - introduction of risk management function
 - improvement in skill levels and time commitment of non-executive directors
- Lack of challenge of the executive team
- Contingency planning and systemic importance

FSA response to the financial crisis

- "The financial crisis exposed governance shortcomings across numerous firms ... It wasn't a failure in structures, which in the past was too often what regulators would focus on in assessing governance, but a failure in attitudes and, in some cases, competence. It's clear that in some firms"
 - boards did not sufficiently challenge the executive
 - boards did not understand their business models sufficiently

FSA response to the financial crisis

- FSA wants a cultural change in boardrooms
- Regulatory changes
 - increased intensity of supervision and intrusiveness
 - judgments on judgments
 - tougher approach to approving persons as Approved Persons
- Some concern over effect of greater governance requirements on international competitiveness and cost effectiveness
- CEIOPS says that it has considered the issues under consideration by the FSA (see response to European Commission Green Paper)
 - agrees that composition of managing body needs to be improved in order to improve challenge to management decisions

Principles based regulation under Solvency II

- How does principles based regulation affect the Directive?
 - a tailored approach but does this affect consistency?
 - intrusive but promoting regulatory understanding of businesses
- How does the Directive affect principles based regulation?
 - a more prescriptive regime
 - governance structure v culture and attitude
 - impact of public disclosure on regulators

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EVERYTHING MATTERS

Implementation of the Solvency II Directive in France / Governance and Risk Management

Michaell Smith

DLA Piper UK LLP (Paris)

26 May 2011

Authorities in France principally responsible for the transposition of Solvency II Directive:

- **ACP – Autorité de Contrôle Prudentiel**

- Supervisory authority in respect of (re)insurance and banking sectors.
- Created in 2010 via a merger of various separate insurance and banking authorities (e.g., ACAM, Commission Bancaire).
- Principal missions:
 - Preserve the stability of the financial sector;
 - Strengthen protection of insured parties and clients;
 - Reinforce the position of France in international negotiations.

- **Ministry of the Economy, Finance and Industry (Ministère de l'Économie, des Finances et de l'Industrie)**

- Direction Générale du Trésor.
- Participate in the development and implementation of regulations in the insurance sector (among others).

- ACP and the Ministry currently addressing the transposition of Solvency II, in consultation with market participants and professional organizations.

- **ACP / Ministry transposition working groups**
 - 6 specific working groups being launched:
 - Quantitative requirements
 - Impact on provisions of the French Insurance Code (e.g., information to be provided to insured parties, powers of supervisors)
 - Impact on accounting
 - Reporting requirements
 - **Governance and risk management**
 - Impact on smaller undertakings (avoid disproportionate impact)

- **Timing**
 - Level 2 measures (implementing measures such as further directives / regulations) being prepared and will be adopted once the Omnibus 2 Directive is adopted (anticipated in 2012)
 - Solvency II measures are to be effective 1 January 2013
 - Ministry has not yet identified the specific measures by which Solvency II will be transposed in France
 - Tight timeline + anticipating final texts + moving ahead with draft measures

Pillar II: Governance and Risk Management Requirements



“...Solvency II is not just about capital. It is a change of behavior – for the sake of enhanced consumer protection, financial stability and efficiency of insurance markets.” – Thomas Steffan, former Chairman of Committee of European Insurance and Occupational Pensions Supervisors - CEIOPS (since replaced by European Insurance and Occupational Pensions Authority - EIOPA)

Pillar II of Solvency II

- Enhanced governance and risk management requirements (Arts. 40 - 50 of the Solvency II Directive).
- Address risks as a complement to the quantitative requirements of Pillar I.
- Insurance undertakings will be required to implement effective risk management systems which allow undertakings to identify, measure, manage and report risks.
- Area of particular focus for French supervisory authorities – ACP April 2011 conference.

- Risk management system requirements, including:
 - providing for the “sound and prudent management of the business;”
 - include an adequate transparent organizational structure;
 - subject to written policies;
 - reviewed internally on a regular basis;
 - must address such matters as the risks included in the prescribed Solvency Capital Requirement calculation, underwriting, asset / liability management, investments, liquidity and concentration risk management;
 - integration into the particular organizational structure as well as the decision making processes of the undertaking.
- An undertaking’s management / administration are held ultimately responsible as concerns the implementation of the required risk management system.

Pillar II: Governance and Risk Management Requirements (cont.)



“Good repute and integrity” requirements

- Applies to those persons who may run the undertaking or have other key functions.
- Adequate professional qualifications, knowledge and experience as concerns the effective management of the undertaking.

Internal control system

- Required to be implemented as part of overall risk management framework.
- Establish risk-related “functions” or specific areas of expertise and responsibility.
 - Compliance function (e.g., advise management on applicable compliance matters);
 - Internal audit function (e.g., evaluation of the adequacy of the internal control and governance system);
 - Actuarial function (e.g., review of overall underwriting policy and adequacy of reinsurance arrangements).

Outsourcing

- Outsourcing of functions generally permitted.
- Certain conditions apply to the outsourcing of critical operation functions or activities (e.g., may not materially impair the quality of the undertaking’s governance system or unduly increase operational risk).
- Member States must ensure that undertakings that outsource particular functions remain fully responsible for discharging their obligations under the Solvency II Directive.

Own Risk and Solvency Assessment - ORSA



Own Risk and Solvency Assessment - ORSA

- Critical part of undertaking's risk management system (Art. 45 of the Solvency II Directive), again a focus of the ACP.
- Regularly occurring internal assessment (at least annually) of :
 - short and long term risks which an undertaking may face, or be anticipated to face; and
 - determine the own funds necessary to meet the undertaking's solvency needs on an on-going basis.
- Choice as to particular ORSA process is left to the discretion of the undertaking, subject to certain specified guidelines.
- Not to serve as an additional capital requirement.
- Results and information (e.g. methodology) in respect of the ORSA must be reported to the applicable supervising authorities.
- With ORSA, Solvency II aims to:
 - integrate risk and capital management,
 - thereby promoting effective and forward-looking risk management as a principal consideration throughout the governance and decision making process of an undertaking.

Concerns

- Uncertainty in the market regarding the specific results which are to be achieved + a call for guidance.
- Smaller undertakings concerned that the requirements under the ORSA are overly complex and burdensome.
- Preliminary advice offered by the CEIOPS / EIOPA regarding various principles to be observed (e.g., the ORSA should be regularly reviewed and approved by the undertaking's administrative or management body; the ORSA process and results should be appropriately evidenced, internally documented and independently assessed).
- Further recommendations (Level 3 standards and guidance) are expected in the first quarter of 2012.

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Solvency II: A Different Way of Thinking

Recent Developments in the Netherlands

AIDA 26 May 2011
Berry Jonk-van Wijk



**Ik maak eigenlijk zelden
fouten, want ik heb moeite
me te vergissen**

*Actually, I hardly ever make
mistakes, because I find it
difficult to be wrong.*

Outline

- Short introduction to Solvency II and the implementation in the Netherlands
- The state of affairs in the Dutch insurance industry: the '*Woekerpolisaffaire*'
- DNB's first steps
- The twin-peaks model and the attached conflicts of interest

Solvency II: What is it? (1)

Solvency II

Quantitative requirements

- Technical provisions
- SCR
- Risk margin
- Investments
- Capital
- Solo and group issues

Qualitative requirements /supervision

- Internal control
- Corporate governance
- Risk management
- Supervisory intervention

Reporting / explanation

- Public and private
 - Frequency
 - Forward looking
 - Relevance
- Comparison with IFRS
- Solo and group issues



**Ervaring is het herkennen
van bepaalde situaties en
omstandigheden in een
vroeg stadium en dan de
juiste beslissing nemen**

*Experience is the recognition of
certain situations and
circumstances at a nearly
stage and then taking the right
decision*

Solvency II: Secondpillar

- Insurance companies:
 - Appropriate internal controls
 - Good corporate governance
 - Adequate risk management system
 - ORSA
 - Assessment of quality of the data
- Supervisory review proces (SRP)
 - Verify and evaluate
 - Test capacity to cope with likely events
 - Demand resolution of weaknesses

Universal Life, Unit linked

- Since 2006, launched by AFM investigation
- Dutch term: “*woekerpolisaffaire*” (introduced by television programme Radar)
- Meaning: “proliferate”
 - High and opaque costs
 - Deficient information
- Many claims brought

Universal Life, Unit linked (2)

- Foundations representing policyholders
- Test cases
- Advice of Dutch financial services ombudsman
- Maximum cost percentage: 3.5%
- Negotiations with foundations: 2.45 – 2.85%
- Settlements cost insurers about €2.5 billion
- Additional measures: an additional €1 billion
- Public debate still ongoing

Supervisory activities already conducted by DNB

■ In practice: three tasks

A) Participating in EIOPA Level 2 implementing measures

B) Drafting level 3 guidelines

C) Preparing own supervisory activities

■ Efforts thus far:

Re A) November 2011 measures expected to be ready

Re B) No guidelines published yet; draft on ORSA soon

Re C) Yes



**Snelheid wordt vaak
verward met inzicht. Als ik
eerder ga lopen dan de
rest, lijkt ik sneller**

*Speed is often confused with
insight. If I start running sooner
than the others, I appear faster*

Supervisory activities already undertaken by DNB (2)

- March 2011 EIOPA requested execution of stress tests
- Questionnaires regarding unit-linked products
 - What if the maximum allowable cost percentage is negatively adjusted?
 - What if an appeal containing error gets awarded (and policies are nullified)?
- Stress testing and scenario analysis
- NB: Which scenarios?! Which measures?!

Twinpeaks model

- Two supervisory authorities
- Functionally organised
- Behavioural (AFM) vs Prudential (DNB)



Twinpeaks model (2)

- Supervisory authorities with conflicting interests
- AFM pays attention to customer interests
- DNB focuses on stability of the system
(supported by Solvency II)
- AFM asks for cheap products
- DNB propagated prices that take into account all relevant risks.



**Wat heb je nou liever, één
goed elftal, of elf goede
eentallen?**

*What would you prefer, one
good team or eleven good
individuals?*

Finalremarks



**Vaak moet er iets
gebeuren, voordat er iets
gebeurt**

*Often something's got to
happen before something
happens*

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Steps for the Implementation of the Solvency II Directive in Germany

Dr. Hanno Goltz

26. Mai 2011

Solvency II

„Model for the World“

(Karel van Hulle)

or

„Masterpiece of Disaster“

(Rainer Jacobus)

Impact of other new laws and regulations

Law on Stock Corporations

- D&O insurance
- Statute of limitation

German Corporate Governance Kodex

- Restrictions for non-executive Directors

New insurance laws and regulations

- Section 64a VAG

- Risk strategy and management
- Adequate internal organisation
- Reporting – Controlling – Auditing

- Section 7a

- Qualifications of non-executive Directors
- Good repute for all

Sections 64b + 81b para 1a

- Remuneration System
 - Fair and reasonable
 - Additional Regulation of 6 pages
 - Motivation effect
 - Risk adversity
- Fine but why

Outlook

Non binding Level 3 Guidelines and Technical Standards

New Insurance Mediation Directive

Prips

Protection of policy-holders against insolvency – guarantee system

and ...

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AIDA - Working Party State Supervision

Governance and Solvency II and the Swiss
perspective

Amsterdam, 26 May 2011

Christian Felderer

Agenda

Agenda Item
1. Main Swiss Regulatory Framework
2. Main Swiss Insurance Governance Principles
3. High Level Comparison of Governance Principles
4. Governance and Solvency II: <i>Equivalence Assessment</i>

- Federal Law on the Federal Financial Market Supervision of 22 June 2007 (FINMAG)
- Federal Law concerning the Supervision of Insurance Businesses of 17 December 2004 (ISL)*
- Regulation on the Supervision of Private Insurance Business of November 2005 (ISR) 9
- Circular Letter 2008/32 on Corporate Governance of Insurers by the Swiss Financial Market Authority (FINMA) of 20 November 2008

* Note: Exemption of branches of foreign (pure) reinsurers from supervision by FINMA – ISL article 2 para. 2 (a).

- Swiss Code of Obligations (CO) – Article 728b: Requirement for company auditors to issue an in-depth report on the internal control system

Additional considerations

- Swiss Code of Best Practice for Corporate Governance – *economiesuisse* of 25 March 2002
- SIX Swiss Exchange - Corporate Governance Guideline (disclosure requirements) of 1 January 2007

- Article 4 of the ISL – **Business Plan**
- Article 14 para. 1 of the ISL – Principles of *fit and proper test* for board and management (Article 12 ISR – **Board**; Article 14 ISR – **Management**)
- Article 13 para. 1 of the ISR – **Double Functions**: „The president of the board of directors may not simultaneously be the presiding officer of the executive board.“
- Article 22 of the ISL – **Risk management**: „An insurance business must be organized in a manner that, in particular, permits it to recognise, limit and monitor all significant risks.“
- Article 29 of the ISL – Responsibilities of the **audit firm**
- Article 29 para. 2 FINMAG – **Reporting** of any material circumstances (Circular Letter 2008/25 of 20 November 2008 – Reporting Obligations)

Corporate governance principles: Circular Letter 2008/32 on Corporate Governance of Insurers („GC Circular Letter“) of 20 November 2008

- | | |
|--|--|
| <ul style="list-style-type: none"> • Clearly documented corporate governance structures | <ul style="list-style-type: none"> • Sensitizing employees for compliance issues |
| <ul style="list-style-type: none"> • Compliance with legal framework and regulatory requirements | <ul style="list-style-type: none"> • Implementation of an independent audit function |
| <ul style="list-style-type: none"> • Integrity and ethical behavior: Issuance of guidelines and instructions (<i>incl. appropriate compensation structures promoting ethical behavior</i>) | <ul style="list-style-type: none"> • Creation of an environment to allow Appointed Actuary performance of his/her duties |
| <ul style="list-style-type: none"> • Avoidance of conflict of interests | <ul style="list-style-type: none"> • Governance principles for Board and Management in addition to corporate legal principles (e.g. Article 716a para. 1 CO – non transferrable duties of the Board) |
| <ul style="list-style-type: none"> • Appointment of compliance function | |

High Level Comparison of Governance Principles 1/2

Main Swiss Prudential Principles	Directive 2009/138/EC - Solvency II
<ul style="list-style-type: none"> • Para. 9 CG Circular Letter – detailed corporate governance principles, including the appointment of a compliance function, independent internal audit function 	<ul style="list-style-type: none"> • Article 41 – Effective system of governance; adequate and transparent organizational structure; clear allocation and segregation of responsibilities, effective information, regular review of governance principles
<ul style="list-style-type: none"> • Article 14 ISA, Para. 10/11 CG Circular Letter – Fit and proper requirements for board and management 	<ul style="list-style-type: none"> • Article 42 – Fit and proper requirements for board and management
<ul style="list-style-type: none"> • Article 13 para. 1 of the SR – Prohibition of Double Functions 	<ul style="list-style-type: none"> • N/A but company law, governance principles
<ul style="list-style-type: none"> • Para. 21/22 CG Circular Letter – „.... risk assessment shall be performed on a regular basis.“ • Article 29 para. 2 FINMAG: reporting of material issues 	<ul style="list-style-type: none"> • Article 45 – Own Risk and Solvency Assessment (ORSA) „... taken into account on an ongoing basis“, including: Overall solvency needs, compliance with capital requirements

High Level Comparison of Governance Principles 2/2

Main Swiss Prudential Principles	Directive 2009/138/EC - Solvency II
<ul style="list-style-type: none"> • Para. 38 CG Circular Letter – Internal and external transparency of risk management and governance measures 	<ul style="list-style-type: none"> • Article 41 – effective information system
<ul style="list-style-type: none"> • Para. 13 CG Circular Letter – implementation of an internal control system • Para. 8 CG Circular Letter – appointment of a compliance function, as appropriate based on size of the business 	<ul style="list-style-type: none"> • Article 46, para. 1 – Internal control; including effective internal control & compliance function
<ul style="list-style-type: none"> • Article 27 ISL & Para. 9 CG Circular Letter – implementation of an Internal Audit function which is independent from management (<i>exemption in special cases – FINMA Circular 2008/35</i>) 	<ul style="list-style-type: none"> • Article 47 – Internal Audit – objective and independent from operational functions
<ul style="list-style-type: none"> • Article 4 ISA para. 2, lit. (j) – Outsourcing 	<ul style="list-style-type: none"> • Article 49 - Outsourcing

Governance and Solvency II: *Equivalence Assessment*

- Articles 172 (reinsurance supervision), 227 (group solvency calculation) and 260 (group supervision) of the Directive 2009/138/EC (Solvency II Directive)

Current assessment of equivalence of Swiss (and Bermudian) supervisory system(s) conducted by CEIOPS, in accordance with defined assessment criteria, based upon request of the EU Commission.

- *April 2011 – completion of questionnaires by FINMA*
- *11 – 19 May 2011 – EIOPA on-site visit at FINMA*
- *September 2011 – EC to receive file*
- *Mid 2012 (?) – Decision expected*

- Prior recognition of equivalence of the Swiss supervisory system with the EU Directive 2005/68/EC (Reinsurance Directive) by CEIOPS on 1 February 2010

Governance and Solvency II: *Equivalence Assessment*

Preliminary Conclusion: Governance systems of the Swiss regulatory system and the Solvency II framework are materially identical.

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**MARVAL
O'FARRELL
& MAIRAL**

Corporate Governance in Mercosur Countries

**Pablo S. Cerejido
May 26, 2011**



MERCOSUR

Economic and political agreement aimed at promoting free trade and movements of goods, people and currency among

- Argentina
- Brazil
- Paraguay
- Uruguay

SOLVENCY II: Regulatory effects

- Argentina: Consultation to the market
- Uruguay: Consultation expected
- Brazil & Paraguay: Significant advances

CURRENT CORPORATE GOVERNANCE REGULATIONS

- Recommended by:
 - IAIS
 - OECD
 - ASSAL

- Partially in line with SOLVENCY II

BRAZIL

- **Internal Control rules since 2004 (SUSEP Resolutions 249/04 and 363/08)**
Insurers and reinsurers must set up internal control system to ensure compliance with laws, regulations and administrative provisions, and control the undertaking's activities and information systems.
- **Internal Audit rules since 2004 (SUSEP Resolution 118/04)**
Reinforce internal audit function and require the appointment of a director that is technically qualified.
- **Risk Management rules since 2004 (SUSEP Resolutions 253/04, 276/04 and 342/07)**
Periodic information to SUSEP to assess how risks are being managed by insurers.
- **Actuarial rules since 2005 (SUSEP Resolution 135/05)**
Insurers must appoint an independent internal actuary, plus a technical director.

PARAGUAY

- **Internal control rules since 2010 (SS Resolution 110/10)**
Insurers must adopt an internal control system.
- **Guidance for Good Corporate Governance Rules since 2010 (SS Resolution 111/10)**
Must appoint an independent risk manager.

URUGUAY

- **Very limited internal control system (BCU Circular 78/04)**
When authorized to operate as an insurer, undertakings must describe to the authorities the internal control system they will set up.
- **Some anti-money laundering measures and reports to be made by independent auditors**

ARGENTINA

- **Internal Control rules since 2006 (SSN Resolution 31,231/06)**
- **Internal Audit since July 2006 (SSN Resolution 31,231/06)**
- **Investment rules and proceedings since 2003 (SSN Resolution 29,211/03)**
- **Anti-money laundering regime since 2002, but strong revamping in 2011 (SSN Resolution 28,608/02 and UIF 32/11)**

MERCOSUR

At present, main focus in:

- Reinsurance legal framework
- Anti-money laundering regulations

SOLVENCY II: Practical effects

EU subsidiaries:

- Conducting asset – liability valuation processes
- Setting up their own Corporate Governance functions in line with Solvency II, although not strictly required by local regulations

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Establishment of EIOPA - Risks and Challenges for State Insurance Supervision in the EU

Bozena Hagen

Europe Institute of the University of Basel

AIDA Europe Conference, WP: State Supervision
Amsterdam, 26 May 2011



Overview

- Introduction
- Short retrospective view
- Preparing the reform
- New architecture of financial supervision
- EIOPA's objectives, organisation, tasks and powers
- Impact on the NSAs
- Conclusions



Introduction

- Centralisation movements in the EU-wide financial supervision after financial crisis 2007/2008
- Insurance supervision also included
- Establishment of the European Insurance and Occupational Pensions Authority (EIOPA)
- What does it mean for the national supervisory authorities (NSAs) in Member States (MS)? Are there any risks or at least challenges ahead for NSAs which deserve closer attention?



Short retrospective view on insurance supervision in the EU (*MS-level*)

- Legal harmonisation process in the insurance sector as of 1960's
- Leads i.a. to:
 - Single-licence principle
 - Home country control and mutual recognition
 - Lead supervisor
- Thus: the cooperation between NSAs becomes more and more important



Short retrospective view on insurance supervision in the EU (*EU-level*)

- But also increased activities on the EU-level
- Thus: specialised Committees have been established, i.a.:
 - The European Insurance and Pensions Committee (EIOPC)
 - The Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) composed of high-level representatives from the NSAs with the following main tasks:
 - Technical advice to the European Commission
 - Promoting convergence in supervisory practices
 - Enhancing the cooperation of NSAs



Preparing the reform

First step towards future reform of the financial, thus also insurance, supervision within the EU:

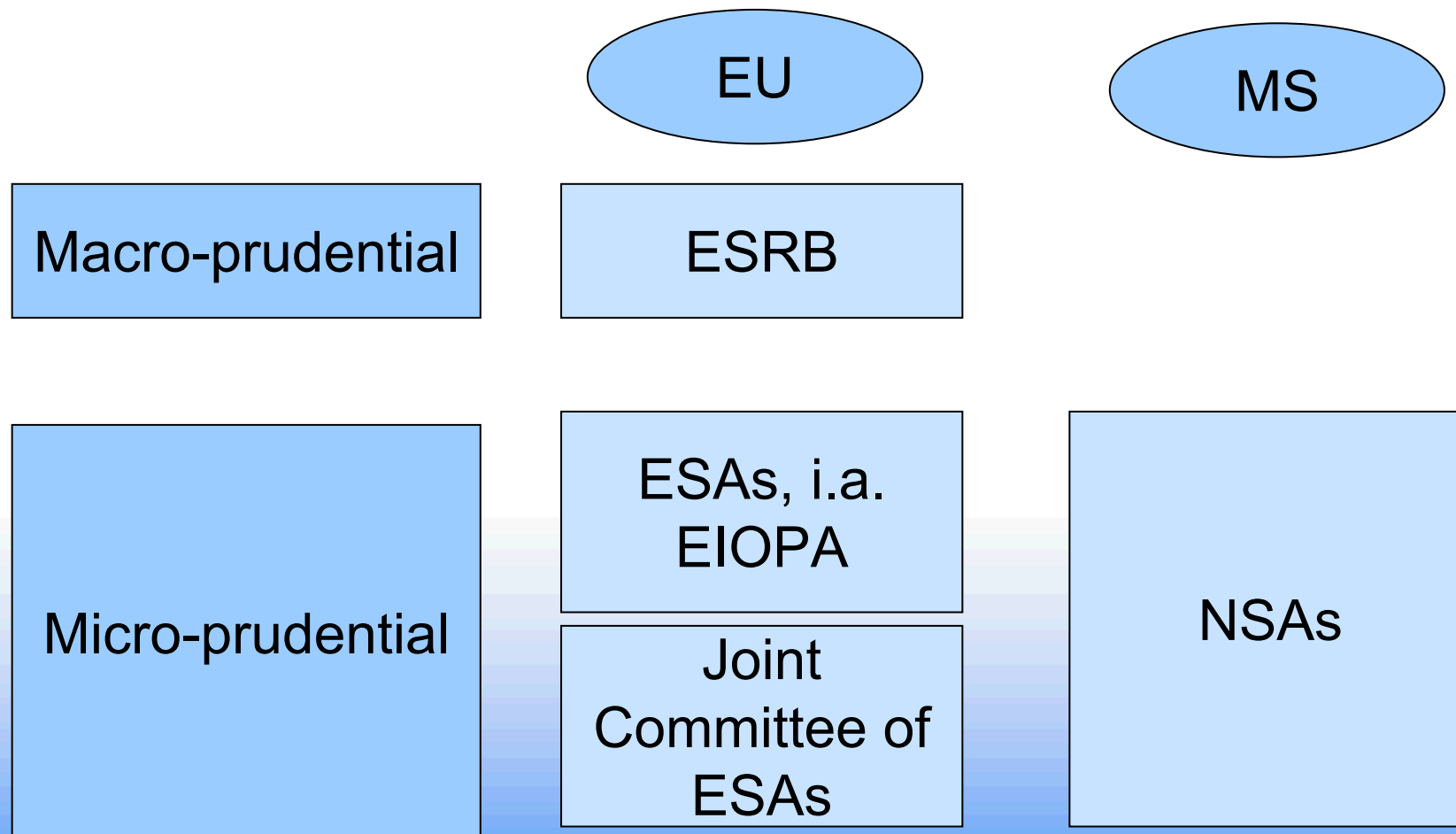
Strengthening the position of CEIOPS and its powers

- Financial support from EU-budget
- Formally remains an „advisory body“
- But.... new options for actions and instruments seems to be much more than only of advisory nature, i.a.:
 - Non-binding guidelines, recommendations, standards
 - Peer reviews
 - Mediation between NSAs
 - New powers in the field of financial stability
 - Qualified majority voting



New architecture of financial supervision in the EU

European System of Financial Supervision





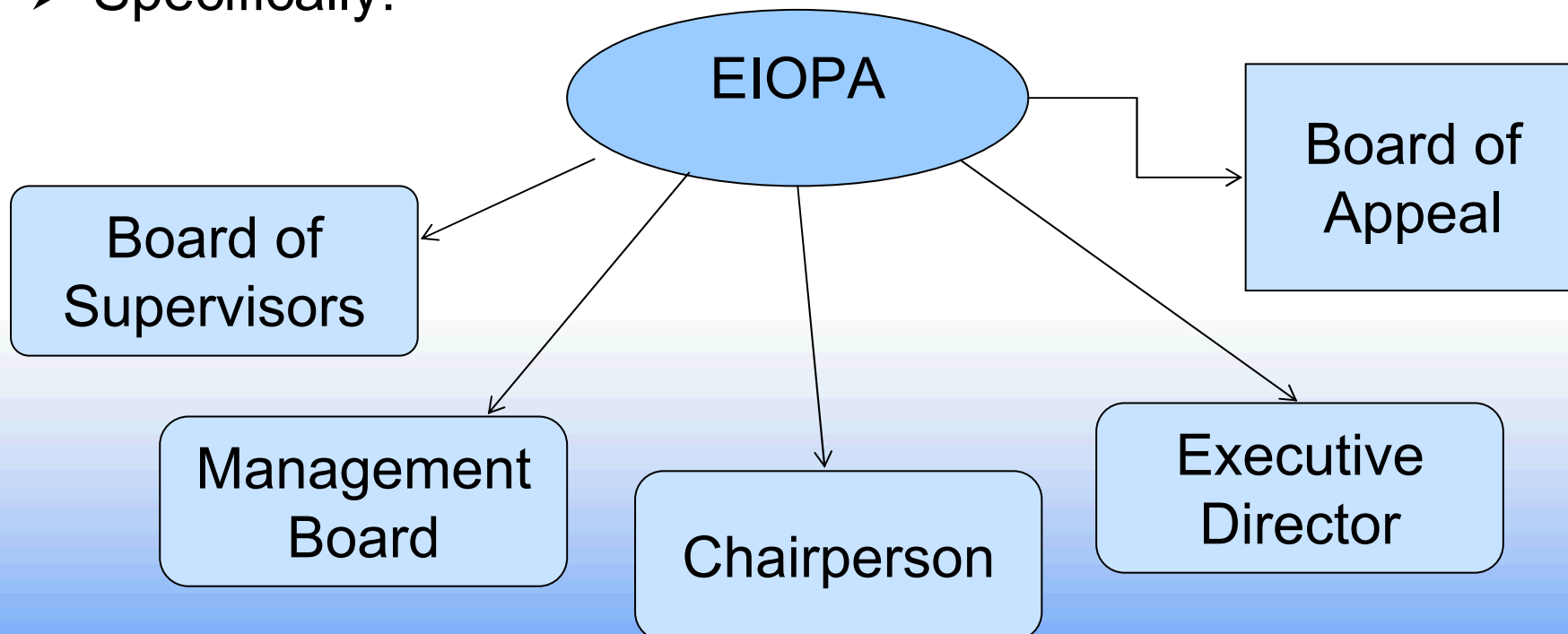
EIOPA and its objectives

- A European *Authority* with wide-ranging objectives
- Main objective: protecting public interest while contributing to the stability and effectiveness of the financial system
- Further objectives, i.a.:
 - Ensuring effective and consistent regulation
 - Ensuring effective and consistent supervision
 - International supervisory coordination
 - Enhancing consumer protection



EIOPA and its formal organisation

- Generally:
 - Formally upgraded: an independent body with legal personality
 - Administrative and financial resources
 - Directly accountable before EP and Council
- Specifically:





EIOPA and its tasks and powers (1)

- Quasi-regulatory competences
 - Regulatory technical standards (RTS)
 - Implementing technical standards (ITS)
 - Guidelines and recommendations with increased enforcement
- Individual powers of decisions
 - Breach of Union law
 - Emergency situation
 - Settlement of disagreement
- Investigatory competences
 - Inquiries
 - Collection of information



EIOPA and its tasks and powers (2)

- Coordination function
- Other (new) fields of activities
 - Consumer protection
 - Monitoring financial activities and products
 - International cooperation
- Further developments
 - Current developments
 - Insurance guarantee systems (IGS)
 - Sanctions
 - Generally: strong review clause in Regulation 1094/2010 establishing EIOPA as well as defining further supervisory competences in specific sector regulation



Impact on the NSAs (1)

Any challenges ahead for NSAs?

- Challenges following from the relationship EIOPA/NSAs?
 - Formally upgraded EIOPA vs. NSAs
 - Investigatory competences and coordination function with analysis focus on collecting information and colleges
 - Quasi-regulatory competences
 - Individual decisions
 - Right to appeal before the Board of Appeal
 - Other (new) fields of activities with analysis focus on international coordination and IGS/sanctions



Impact on the NSAs (2)

Any challenges ahead for NSAs?

- Tensions between NSAs
 - ‘Committee on financial innovation’
 - Peer reviews

- Organisational matters with focus on objectivity within EIOPA and insurance representation within ESRB

- Further developments



Conclusions

- Influential EIOPA
- Better cooperation between NSAs
- But also loss of influence
- NSAs still responsible for daily supervision of financial institutions and nationally accountable
- Great challenges ahead for NSAs:
 - Acting locally with daily supervisory tasks and in the Union's interest as part of a central authority with enhanced powers
 - Rebuilding and maintaining their authority in relation to market players where it has been weakened due to EIOPA's actions or decisions directly addressed to financial institutions
 - Dealing with new tensions between NSAs which may follow from the centralisation and reorganisation of the European supervisory architecture



Thank you for your attention!

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Discussion