

**CEIOPS Advice to the European Commission**

**Equivalence assessments to be undertaken in  
relation to Articles 172, 227 and 260 of the  
Solvency II Directive**

**(former Consultation Paper no. 81)**

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# 1. Introduction:

- 1.1. In its letter of 11 June 2010, the European Commission (Commission) requested CEIOPS to provide, by end August 2010, fully consulted upon final advice on which third country supervisory regimes should be included in the first wave of equivalence assessments ("first wave third countries"). CEIOPS is asked to identify and prioritise the third countries where an equivalence assessment would be desirable before the introduction of Solvency II, and recognising that further equivalence assessments will be carried out subsequent to the first wave.
- 1.2. In the call for advice accompanying the Commission's letter<sup>1</sup>, the Commission notes that the overarching aim of the equivalence assessment should be to ensure that the third country supervisory regime ensures a similar level of policyholder and beneficiary protection as the one provided under Solvency II. Since Solvency II adopts an economic risk-based approach to insurance regulation, the Commission states that the focus of equivalence assessments should be on the substantive issue of whether the third country (re)insurance undertakings are subject to a risk-based supervisory regime.
- 1.3. In its call for advice, the Commission has also provided a non-exhaustive list of some of the factors that CEIOPS should take into account when determining the list of first wave third countries. These factors are:
- Whether the third country currently has a supervisory regime that is fully risk-based or has taken measures to move towards such a system.
  - The materiality of an equivalence finding to EU insurance and reinsurance undertakings and their policy holders
  - The number of related undertakings situated in the third country held by EU insurance and reinsurance undertakings
  - The importance to the insurance market in the third country of the equivalence finding
  - The existence currently of mutual recognition or equivalent arrangements between third countries and Member States.
- 1.4. CEIOPS has considered this list of factors in conjunction with the specificities of each of the relevant articles within Solvency II where equivalence assessments are envisaged: i.e. Article 172, dealing with the equivalence of reinsurance supervision; Article 227, dealing with the group solvency calculation and Article 260, dealing with the equivalence of third country group supervision.

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<sup>1</sup> MARKT/H2/JH/CR/ad(2010)348677 <http://www.ceiops.eu/media/files/requestsforadvice/Equivalence-June-2010/equivalence-CfA-letter-20100611.pdf>

- 1.5. In this advice, CEIOPS also kept in mind that the Commission might propose transitional arrangements in L2 measures. CEIOPS has previously advocated that the Commission consider the need for a suitable 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 be developed for internationally active groups.<sup>2</sup>
- 1.6. CEIOPS was also asked to provide in its final advice an outline of the methodology used to define the list of first wave third countries. Chapter II of this advice deals with the Committee's general approach to this topic, and includes specific consideration of the United States. Chapters III, IV and V review the considerations in regard to each of the equivalence assessments (Articles 172, 227 and 260 respectively). Chapter VI contains CEIOPS' findings and advice.
- 1.7. The Commission has recognised that for some third countries the application of the factors outlined in paragraph 1.3 above will result in different conclusions on the appropriateness of including certain countries in the first wave in respect of the different articles, and that therefore a flexible approach is needed. However, it has encouraged CEIOPS to pursue simultaneous assessments of equivalence in relation to all three articles wherever possible and appropriate. In particular it has suggested that the assessments under Articles 227 and 260 be combined, since they are both likely to be relevant to large internationally active groups. The limitations in this respect are examined further in Chapter II.

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<sup>2</sup> <http://www.ceiops.eu/media/files/consultations/consultationpapers/CP78/20100401-CEIOPS-Cover-Letter-Equivalence-Advice-submission.pdf>

## 2. Chapter II – Methodology

### 2.1. The factors proposed by the Commission

- 2.1.1. CEIOPS has reflected on each of the factors proposed by the Commission (see paragraph 1.3 above) when considering first wave third countries, and on whether there should be any hierarchy amongst them.
- 2.1.2. The first factor proposed by the Commission is whether the third country currently has a supervisory regime that is **fully risk-based or has taken measures to move towards such a system**. The Commission has emphasised that Solvency II adopts an economic risk based approach and its view that the focus of equivalence should therefore be on the substantive issue of whether the third country (re)insurance undertakings are subject to a risk-based supervisory regime.
- 2.1.3. The Commission's view is clearly a qualification of its statement in the call for advice that the overarching aim of the equivalence assessment should be to ensure that the third country supervisory regime ensures a similar level of policyholder and beneficiary protection as the one provided in Solvency II. It is certainly conceivable that similar levels of protection of policyholders and beneficiaries could be achieved using approaches which are not risk-based in the same way as Solvency II is.
- 2.1.4. Whether or not a particular third country supervisory regime is risk-based in a comparable way to Solvency II may require some detailed assessment. However, for the purposes of determining its advice on first wave third countries, CEIOPS has sought to exclude countries that have supervisory regimes which, at first sight, do not show evidence of being risk-based, and where there is no clear indication that they are in the process of moving towards a risk-based approach.
- 2.1.5. Solvency II promotes an economic, risk-based approach based on incentives for insurance and reinsurance undertakings to properly measure and manage their risks.
- 2.1.6. In providing this advice, CEIOPS has also used findings of the IMF as to the "risk-based" orientation of third countries, where available.
- 2.1.7. The second factor the Commission has suggested is the **materiality of an equivalence finding to EU insurance and reinsurance undertakings and their policy holders**. CEIOPS considers that this a very substantial factor to be taken into account in determining first wave third countries. In the following chapters CEIOPS has outlined how it has made a judgment on materiality as it applies in relation to each of the equivalence assessments.
- 2.1.8. The third factor the Commission has proposed is **the number of related undertakings situated in the third country** held by EU insurance and reinsurance undertakings. There are potentially a number of aspects to this, including in the context of determining the group solvency of EU groups for which the deduction and aggregation accounting method has been allowed, the equivalence of the third countries in which they operate is clearly important (Article 227).

- 2.1.9. However, the simple number of related undertakings in the third country may not be a true reflection of the materiality of that third country overall to EU insurance and reinsurance undertakings. The significance of the business conducted through the related undertakings needs to be assessed.
- 2.1.10. Furthermore account may need to be taken of the fact that for some EU groups a single undertaking in a specific third country where few other EU (re)insurers are represented may generate a major part of their business. These issues are considered further in Chapter IV.
- 2.1.11. The fourth factor proposed by the Commission is the **importance to the insurance market in the third country of the equivalence finding**. While figures exist on the importance of the insurance market to some third countries as measured by premiums as a percentage of GDP, it is not easy to gather information either on the importance of cross-border business of the specific importance of the EU in this context<sup>3</sup>. However, there are some clear examples of countries where the insurance sector is both focused on international business, comprises a significant part of their economy, and has a significant engagement in EU business (for example, Bermuda and Guernsey). However it is not self-evident that the importance of the insurance market for the third country is sufficient in itself to justify the inclusion in the first wave.
- 2.1.12. The final factor proposed by the Commission is the **existence currently of mutual recognition or equivalent arrangements** between third countries and Member States. CEIOPS has surveyed the existence of Memoranda of Understanding between its individual members and third countries, the majority of which deal with the exchange of information under conditions of professional secrecy. CEIOPS also took note of the existing signatory parties to the IAIS Multilateral Memorandum of Understanding.
- 2.1.13. Mutual recognition agreements, in terms of market access, are clearly a Community competence. However, it is recognised that some CEIOPS members have sought to assess the reliance they can place on supervision in relevant third countries in the context of their own supervisory regime. While these unilateral recognition arrangements may be relevant when assessing particular third countries, it is not clear that they should be a key determinant of first wave third countries.
- 2.1.14. In relation to Switzerland, CEIOPS members have agreed a collective Memorandum of Understanding on the exchange of information with the Swiss regulator. This has allowed the active participation of the Swiss regulator in relevant colleges of supervisors.
- 2.1.15. Taking a view on the factors proposed by the Commission overall, CEIOPS considers that the first two, dealing with the extent to which a third country's supervisory regime is risk-based, and the materiality of the third country to EU insurance and reinsurance undertakings and their policyholders, should be given greater weight than the other three factors identified, and the advice reflects this conclusion.

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<sup>3</sup> The Swiss Re sigma figures in their World Insurance reports exclude cross-border business in the figures for insurance penetration.

## 2.2. Other factors CEIOPS considers to be relevant

2.2.1. There are a number of other factors that CEIOPS considers are relevant to its advice on the third countries to be assessed in the first wave.

2.2.2. The first is the **willingness of the third country to engage in the process**. Under the call for advice, CEIOPS will have to provide its technical advice on the equivalence of the third countries the Commission determines should be in the first wave by July 2011. To meet this tight time schedule the full co-operation of the supervisory authority in the third country concerned will be absolutely essential. Furthermore, a reluctance to engage fully may cast doubt over the willingness of the third country to adopt a collaborative approach to supervision in the future. Consequently CEIOPS invited those third countries that it has identified in Chapter VI as priorities for potential inclusion in the 1<sup>st</sup> wave to indicate their willingness and commitment to engage in the process.

2.2.3. A second factor **is the realism of individual third countries being able to meet the criteria ultimately agreed for equivalence**. This is particularly the case in respect of potential assessments under Article 260, dealing with the equivalence of third country group supervision. Solvency II has introduced a sophisticated group solvency regime. CEIOPS recognises that some third countries have active programmes to introduce similar group supervision. In the absence of existing group supervision, or well developed programmes to introduce this, it would be premature to carry out an assessment under Article 260 even if equivalence assessments under Articles 172 and/or 227 are desirable.

2.2.4. A third factor driving CEIOPS advice is its **capacity to carry out assessments**. Equivalence assessments are resource intensive (including for the third country supervisors concerned), and there is undoubtedly a limit to how many CEIOPS can undertake in the time scale allowed i.e. July 2011. The number of countries for consideration in the first wave has to be kept realistic.

2.2.5. A fourth factor **is the proposed evolution of the regulatory regime to a model akin to Solvency II**. Some third countries intend to build up and implement a risk-based solvency system that will be similar to Solvency II. These countries have been invited to indicate to CEIOPS their interest in being in the first wave.

2.2.6. There are other factors that CEIOPS has not incorporated in considering its advice. These include issues relating to market access and reciprocity. Some practical constraints on the ability to undertake an informed assessment have also been excluded, though very real – for example the ability to understand fully the legal provisions in third countries absent a suitable translation. The practicality of assessing the United States supervisory regime is considered below.

## 2.3. The United States

2.3.1. Legislation recently passed by the US Congress, creates for the first time a Federal Insurance Office within the US Treasury dealing with insurance. The most substantial authority granted to the newly created Federal Insurance Office is to enter into international agreements and to pre-empt state law if necessary. However, the day-to-day supervision of insurance and reinsurance companies will remain an individual state competence.

2.3.2. The National Association of Insurance Commissioners (NAIC) acts as the forum for co-ordinating policy on the development of the supervisory regime in the United States, including for the drafting, negotiation and promulgation of model laws. However, the NAIC is not a supervisory authority in its own right, and an assessment of equivalence under the Financial Conglomerates Directive in 2008 foundered on the fact that the NAIC was not a "competent authority" as understood in the relevant EU directives.

2.3.3. In terms of whether it is possible, in practical terms, to undertake a technical assessment of the equivalence of United States, it is notable that the IMF has just successfully completed an examination of the United States insurance regime under the Financial Services Assessment Programme, utilising the International Association of Insurance Supervisors (IAIS) Insurance Core Principles. Of the 28 Core Principles, 11 were found to be observed, 14 largely observed and 3 (including group supervision) partially observed. In its report, the IMF comments that:

*"The well-developed procedures of the NAIC have made it possible to take a view, in particular for financial regulation, of the degree of uniformity, in extent and quality of regulation, across the states. Nonetheless, the assessors note that their conclusions are subject to the unavoidable limitations on their ability to verify practices across the country (particularly in the implementation of regulatory requirements) that result from a state-based system with over 50 separate authorities."*

2.3.4. Clearly assessments of equivalence under Solvency II are made by reference to the relevant provisions of that Directive rather than the IAIS Insurance Core Principles<sup>4</sup>, but - in terms of the approach - CEIOPS would probably have to use a similar process to that adopted for the FSAP if it was invited by the Commission to assess the equivalence under relevant Solvency II articles of the United States as a whole. Further elaboration on this process is contained in Annex 1. Given the resource commitment involved, any CEIOPS assessment would preferably cover all three equivalence articles. However, while the NAIC envisage that group supervision will be developed, it is clear that this is some way off (NAIC is currently undertaking work on a Roadmap for the Solvency Modernisation Initiative), so an assessment under Article 260 would not currently seem appropriate.

2.3.5. In any assessment of the United States, appropriate in-depth further consideration would need to be given to the question of the exchange of information under conditions of professional secrecy. This requirement is fundamental to all three equivalence assessments. CEIOPS members are restricted from exchanging information with the NAIC since it is not a competent authority for insurance supervisory persons.

2.3.6. For equivalence to be determined for the United States as a whole, CEIOPS members would need to explore the possibility of a joint agreement with the US state supervisory authorities collectively. Since individual US states have their own separate professional secrecy requirements and freedom of information provisions, any agreement/Memorandum of Understanding would need to be very tightly drafted to ensure that restricted information is protected, and not subject to any onward disclosure without the agreement of the provider.

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<sup>4</sup> CEIOPS also notes the full binding power of the SII Framework Directive for all EU Member States compared to the IAIS Core principles which from a legal perspective falls under the non-binding guidance category"



## **3. Chapter III – Equivalence assessments – Article 172**

### **3.1. Background and scope**

- 3.1.1. Article 172 (1) of the Solvency II Directive requires the Commission to adopt implementing measures specifying the criteria to assess the equivalence of third country solvency regimes with regard to reinsurance activities of undertakings with their head office in the third country
- 3.1.2. Based on the criteria and according to Article 172 (2) of the Solvency II Directive, the Commission may decide, in accordance with procedure in Article 301 (2) of the Solvency II Directive, whether a solvency regime of a third-country, applied to reinsurance activities of undertakings with their head office in that third-country, is equivalent to the regime laid down in Title I of the Solvency II Directive.
- 3.1.3. CEIOPS notes that in the absence of a Commission decision on the equivalence of a third country, or of any relevant transitional measures that the Commission might propose, the treatment of third country reinsurers would remain in the competence of each of the Member States.

### **3.2. Methodology**

- 3.2.1. Based on the factors mentioned in Chapter II and for finding out the materiality of an equivalence finding to EU insurance and reinsurance undertakings and their policyholders, CEIOPS circulated a survey to all Supervisory Authorities of the Member States to gain information about third-country insurance and reinsurance undertakings and their market share within the EU/EEA. Supervisory Authorities were asked to provide information about the undertakings conducting business in their jurisdictions. Furthermore Member States were invited to provide a valuation of the importance of third-Country reinsurance undertakings for the insurance and reinsurance market in their jurisdiction.
- 3.2.2. Regarding the importance of an equivalence finding to the insurance market in the third country, CEIOPS considered the data provided by the International Association of Insurance Supervisors (IAIS) in its Global Reinsurance Market Report 2009. According to the Methodology mentioned in Annex II of the report, only reinsurers whose gross unaffiliated reinsurance premiums are equal or exceed US\$ 800 million or gross unaffiliated technical reserves are equal or exceed US\$ 2 billion are covered. Based on these thresholds the IAIS Global Reinsurance Market Report provides an international accepted overview of the jurisdictions with major reinsurance markets. CEIOPS assumes that for the jurisdictions where (re)insurance undertakings provide data to the report and which are not a Member State of the EU/EEA, finding equivalence is a matter of importance.
- 3.2.3. In addition to the countries identified in the IAIS Report, there might be also some countries with a significant reinsurance captive market which are not covered by the Report because of the threshold. Those countries are invited to provide CEIOPS with some data on the number of reinsurance captives held by EU undertakings, gross written reinsurance premiums in total and written in the EU/EEA and their GDP (EUR/\$) and reinsurance contribution to national GDP (%). Satisfactory

levels of additional data has been collected from both EU and third country stakeholders from this request.

- 3.2.4. At the current stage CEIOPS is not in the position to elaborate whether or not a particular third country supervisory regime is truly risk-based in a comparable way to Solvency II. However, in providing its final advice, CEIOPS has taken into account IMF findings in this respect and comments received from stakeholders during the consultation process.
- 3.2.5. With regard to the fifth criteria of the Commission, CEIOPS refers back to the remarks under 2.1.12. and has pursued an update to its existing survey of Memoranda of Understanding between its individual members and third countries. CEIOPS notes that the majority of these MoU continue to deal with the exchange of information under conditions of professional secrecy.

### **3.3. Assessment:**

- 3.3.1. Based on the survey mentioned under 3.2.1., CEIOPS identified a number of supervisory regimes of third country (re)insurance undertakings as significant for EU/EEA (re)insurance undertakings and their policyholders. Furthermore the jurisdictions identified were ordered by its importance based on the evaluation of each Member State.
- 3.3.2. CEIOPS identified Switzerland, Bermuda and the United States as the highest ranking jurisdictions in terms of importance. CEIOPS notes that Japan and Barbados have also been identified as being of medium relevance with Turkey and Hong Kong also being mentioned.
- 3.3.3. Stakeholders were invited to provide additional views and supporting data as to the CEIOPS ranking (including reinsurance relevant data as per 3.2.3.). Satisfactory levels of additional data has been collected from both EU and third country stakeholders from this request.
- 3.3.4. Taking into account the data provided by the IAIS Global Reinsurance Market Report 2009 and data submitted in response to the request in this consultation paper, the jurisdictions with the major reinsurance market outside the EU / EEA are in alphabetical order Bermuda, Japan, Switzerland and the United States.
- 3.3.5. The number of reporting (re)insurance undertakings in each jurisdiction whose gross unaffiliated reinsurance premiums are equal or exceed US\$ 800 million or gross unaffiliated technical reserves are equal or exceed US\$ 2 billion, have also been taken into account as an indicator for the importance of an equivalence finding of the supervisory regime in these countries. There are 8 undertakings which provide data from Bermuda, 2 undertakings provide data from Japan, 3 undertakings provide data from Switzerland and 23 undertakings provide data from the United States of America.

## 4. Chapter IV – Equivalence assessments – Article 227

### 4.1. Background and scope

4.1.1. Article 227 of the Solvency II Framework Directive refers to the group solvency of an undertaking which is a participating undertaking in a third country (re)insurance undertaking. The equivalence assessment applies solely for the purposes of the deduction & aggregation method under Article 233 (alternative method for the calculation of group solvency). Whereas Article 227 allows a participating undertaking to aggregate the solo requirements of a related third country undertaking using the local third country rules using the deduction & aggregation method, under the default method in Article 230 (accounting consolidation) related third country undertakings are consolidated applying the Solvency II rules. CEIOPS notes that under Article 220(2), the group supervisor must consult the other supervisory authorities concerned and the group itself before deciding to apply the deduction & aggregation method.

4.1.2. Under Article 227(1) where the third-country in which that undertaking has its head office makes it subject to authorisation and imposes on it a solvency regime at least equivalent to that laid down in Title I, Chapter VI, Member States may provide that the calculation of the group solvency shall take into account (as regards that undertaking), the Solvency Capital Requirement and the own funds eligible to satisfy that requirement, as laid down by the third-country concerned.

4.1.3. In circumstances where the Commission has not taken a decision on equivalence, the group supervisor may carry out any verification of the equivalence of the third country regime for the purpose of the group solvency calculation on its own initiative or at the request of the participating undertaking.<sup>5</sup> The group supervisor is required to consult the other supervisory authorities concerned and CEIOPS before taking a decision on equivalence. Where the Commission has adopted criteria for the assessment of equivalence, it is anticipated that these will be utilised by the group supervisor in any equivalence determination (i.e. in the absence of any Commission decision).

### 4.2. Methodology

4.2.1. Based on the factors mentioned in Chapter I and for finding out the materiality of an equivalence finding to EU insurance and reinsurance undertakings and their policyholders, CEIOPS circulated a survey to all its Members asking those who are also group supervisors to provide information about related third-country-(re)reinsurance undertakings and their market share within the individual third countries. A short survey of the top 30 groups had previously shown that that they had related undertakings in well over 50 countries so a more detailed survey of materiality was necessary.

4.2.2. Following replies received from its Members, CEIOPS has sought information from some third country supervisors and stakeholders about their insurance markets. Those concerned have been asked to provide information about the EU subsidiaries conducting business in their jurisdictions and their importance. Satisfactory levels of additional information has been collected from both EU and third country stakeholders including supervisory authorities from this request.

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<sup>5</sup> Article 227(2)

4.2.3. With regard to the fifth criteria of the European Commission, CEIOPS maintains its remarks under par 2.1.12.

### **4.3. Assessment:**

4.3.1. Based on the survey mentioned above, CEIOPS identified a number of supervisory regimes of third country (re)insurance undertakings as significant for EU/EEA (re)insurance undertakings and their policyholders. Furthermore the jurisdictions identified are ordered by its importance based on the evaluation of each Member States.

4.3.2. Among the 50+ jurisdictions, CEIOPS identified United States, Switzerland and Bermuda as the highest ranking ones in terms of importance for more than one member. CEIOPS recognises that some third countries<sup>6</sup> are of high relevance for one Member State in particular but do not reach the same level of relevance at the EU level. This finding is supported by the additional information received from stakeholders in response to the request in this consultation paper

4.3.3. CEIOPS notes that in the absence of a determinative decision on equivalence made by the European Commission, the verification of equivalence shall be carried out by the group supervisor. Subject to any relevant transitional measures the Commission might propose, where a third country is of high relevance for a single EU group CEIOPS recommends that the group supervisor addresses these third countries with priority and well in advance of the implementation of Solvency II. Group supervisors should involve CEIOPS in the process and aim to have their provisional findings on equivalence on the same timeline as the Commission.

4.3.4. CEIOPS recognises that in these circumstances the possibility exists that different insurance supervisory authorities may come to different equivalence decisions on the same third country regime in respect of different groups. This raises the risk of inconsistency in the treatment of third country regimes and in the calculation of group solvency in the EEA. Consequently, CEIOPS intends to ensure through active co-ordination that group supervisors follow a consistent approach.

4.3.5. Stakeholders were invited to provide additional views and supporting data as to the CEIOPS ranking.

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<sup>6</sup> For example : Brazil, Mexico, Canada, India, Turkey etc

## **5. Chapter V – Equivalence assessments – Article 260**

### **5.1. Background and scope**

- 5.1.1. This Chapter addresses equivalence assessments in relation to Article 260 of the Solvency II Directive. Article 260 refers to the assessment of equivalence of third countries' group supervision.
- 5.1.2. Group supervision is a fundamental feature of Solvency II. It is therefore essential to ensure before exempting a group from that supervision at European level that the group supervision regime in the jurisdiction where the head of the group is located is at least equivalent to that under Solvency II.
- 5.1.3. Article 261 states that, in the case of equivalent supervision referred to in Article 260, Member States shall rely on the equivalent group supervision exercised by the third-country supervisory authorities. This highlights the importance of cooperation arrangements with third country supervisors to ensure the appropriate level of supervision of EEA entities.

### **5.2. Methodology**

- 5.2.1. Based on the factors mentioned in Chapter I and for finding out the materiality of an equivalence finding to EU insurance and reinsurance undertakings and their policyholders, CEIOPS circulated a survey to all its Members asking about key groups operating in the EU with a head office in a third-country.
- 5.2.2. In providing this advice for Article 260, CEIOPS aside from using findings of the IMF as to the "risk-based" orientation of third countries, where available has used the IMF findings as to the existence of a groups supervision regime. Satisfactory levels of additional information has been collected from both EU and third country stakeholders from this request.

### **5.3. Assessment**

- 5.3.1. In the context of equivalence under Article 260, the other major factor in considering which countries should be in the first wave is the likelihood of a positive equivalence determination for as noted in paragraph 2.2.3, Solvency II has introduced a sophisticated group solvency regime. It is clear from the results of the survey that the United States, Switzerland and Bermuda are all home to significant groups active in the EU. Groups from Canada, Japan and Australia also have a presence in the EU.

- 5.3.2. Of the six countries mentioned above, Switzerland has introduced a full group solvency regime and Bermuda has indicated that it proposes to have a regime equivalent to Solvency II in place by 2012. The recent IMF report on the United States under the FSAP programme concludes that they partially observe the IAIS core principle dealing with group-wide supervision, and the NAIC has indicated that attention will be given to this as part of the Solvency Modernisation Initiative. However, there is no date for the completion of this work, and consequently there is no realistic chance of a positive result for the US within the timescale of the 1<sup>st</sup> wave of countries.
- 5.3.3. Canada and Australia are understood to pursue group supervision under a risk-based approach. It is unclear the extent to which the Japanese Financial Services Agency operates risk-based supervision, but it takes a risk-focused approach which seeks to deliver the timely recognition of priority issues and an effective response. In view of the resource criteria, and responses received from this consultation and further considerations by CEIOPS, CEIOPS further considered whether an assessment under Article 260 would be appropriate in respect of these countries.
- 5.3.4. CEIOPS notes that in the absence of a determinative decision on equivalence made by the European Commission and subject to any relevant transitional measures the Commission might propose, the verification of equivalence shall be carried out by the supervisory authority which would be the group supervisor if the criteria set out in Article 247 for the identification of group supervisor for EU groups were to apply. This means that a third country that is not included in the first wave may still be assessed early once the Solvency II regime is in force. CEIOPS recognises that in these circumstances the possibility exists that different insurance supervisory authorities may come to different equivalence decisions on the same third country regime in respect of different groups. This raises the risk of inconsistency in the treatment of third country regimes and in the calculation of group solvency in the EEA. Consequently, CEIOPS intends to ensure through active co-ordination that group supervisors follow a consistent approach.

## 6. Chapter VI: CEIOPS' advice

- 6.1.1. Chapters III to V review the factors that CEIOPS has taken into account in considering the possible priorities for first wave third countries in respect of each of the three equivalence determinations under Solvency II. It is recognised that different stakeholders may justifiably take different views as to these possible priorities, and that there are a number of further considerations that could be taken into account, for example the size and importance (actual and prospective) of the third country's insurance market, the proposed evolution of the regulatory regime to a model akin to Solvency II, and whether the third country is a potential applicant for EU membership. On this basis countries such as Australia, Brazil, Canada, China, India, South Korea and Turkey would all qualify on the basis of the importance of their markets. Mexico is a good example of a country that could be included as it has indicated that it intends to implement a solvency regime similar to Solvency II, and Turkey and certain Balkan states on the basis that they wish to become EU members at some point.
- 6.1.2. CEIOPS also recognises that, in the context of group supervision, there is a large number of different third countries that are relevant for particular EU groups, and that the Commission may need to consider an appropriate transitional measure. Likewise for third countries not included in the first wave of assessments under Article 172 the Commission might also consider a transitional provision. In addition to the proposals it has elaborated on how third countries that are of specific importance to particular groups might be addressed by the group supervisor in the absence of a Commission equivalence determination, and the potential for the Commission to propose a transitional measure in respect of group supervision, CEIOPS notes that its first wave of technical assessments and advice to the Commission should be followed immediately by subsequent assessments.
- 6.1.3. CEIOPS has concluded that, in the light of competing claims for inclusion in the first wave of third countries to be assessed, its advice on possible countries should focus primarily on the risk based nature of the third country regime and the materiality of an equivalence finding to EU insurance and reinsurance undertakings and their policy holders. In finalising its advice, CEIOPS has also taken into account input received from third country supervisors as to their willingness to participate in the first round equivalence assessments under the new Solvency II regime.
- 6.1.4. CEIOPS advises the Commission that the countries to be included in the first wave are Switzerland and Bermuda, in respect of all the three equivalence articles.
- 6.1.5. While recognizing the current difficulties in pursuing an assessment of the United States and CEIOPS' own ability to undertake multiple assessments, CEIOPS also notes the positive response received from the NAIC during the consultation period regarding their willingness to participate in an assessment. As such, if requested to do so by the Commission, CEIOPS stands ready to undertake an assessment of the US supervisory regime in its entirety in respect of articles 172 and 227. In respect to professional secrecy equivalence, CEIOPS notes that further investigation is required as to possibility to avoid a state by state assessment.
- 6.1.6. CEIOPS would not be in a position to take on additional equivalence assessments in the first wave due to the high level of resources required by equivalence exercises and the very limited timeframe specified.

## Annex 1:

### A possible process to assess the United States supervisory regime

- A.1.1. A possible process to be utilised in any assessment would rely heavily on the NAIC Financial Regulation Standards and Accreditation Program<sup>7</sup>. Accreditation is a certification given to a state insurance department once it has demonstrated it has met and continues to meet an assortment of legal, financial and organisational standards. The NAIC accreditation programme is well established, with each state being subject to a full accreditation review once every 5 years, and subject to interim annual reviews. The full reviews look at the state's laws and regulations, the financial analysis and financial examinations functions, and organisational and personnel practices to assist in determining a state's compliance with the accreditation standards.
- A.1.2. The review of the state's laws and regulations incorporate an assessment against a series of NAIC Model Acts and Regulations. For example, to be accredited the state's provisions on capital and surplus requires that the Risk Based Capital for Insurers Model Act or provisions substantially similar shall be included in the state laws or regulations. It would therefore be possible for CEIOPS to review the relevant (for equivalence purposes) Model Acts and Regulations which form part of the accreditation programme and be reasonably assured that they are applied across all accredited states. As of March 2010, all 50 states and the District of Columbia were accredited.
- A.1.3. It would clearly be necessary to perform a gap analysis between provisions in Model Acts and Regulations covered by the accreditation programme and measures that would be expected to be in place in order for the relevant criteria for equivalence to be considered observed. It might also be anticipated that a small number of states would be visited as part of the assessment, further to validate their equivalence following a review of the Model Acts and Regulations - if the Commission decides that the United States should be in the first wave. This approach would not be applicable in the case of professional secrecy, which would have to be addressed separately.

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<sup>7</sup> [http://www.naic.org/documents/committees\\_f\\_FRSA\\_pamphlet.pdf](http://www.naic.org/documents/committees_f_FRSA_pamphlet.pdf)