

# Newsletter

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EFRP wishes all its members and supporters the very best Seasons Greetings and a Happy New Year

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All presentations from the Frankfurt Congress are available on the EFRP intranet site:

<http://www.efrp.org/login.asp>

## European Pension Funds Congress – 21 November 2007

For the second year running, EFRP held its European Pension Funds Congress in Frankfurt. With 23 speakers and more than 100 in attendance, the congress continues to grow in size and stature.

In opening the Congress, Aart Jan de GEUS, deputy Secretary-General of OECD, stressed in his key note speech the importance of **financial education** and the **role of default options** in DC pension systems.

The EFRP presented its **survey** assessing the **implementation of the IORP Directive** and its findings related to the impact of **the proposed Solvency II Directive on IORP regulation**. Chris VERHAEGEN, Secretary General EFRP, voiced the quite unanimous view of the industry that it is **too early** to judge the delivery of the IORP Directive. A similar message was delivered by Commissioner McCREEVY at the CEIOPS conference – 20 November 2007 in Frankfurt- who indicated that “a strong business case will be required if we are to decide on a revision of the IORP directive”.

Wil BECKERS, Chairman of the EFRP Working Group Funding and Solvency, expressed **concern** about the impact of the proposed Solvency II Directive on IORP regulation – an EFRP study has found that as a consequence of the proposed Solvency II Directive, IORPs would have to **increase assets** by around of 40-60% of liabilities or alternatively they would have to both **sell off equity investments** and raise the duration of the fixed income portfolio.

The announcement of Commissioner McCREEVY, the day before the EFRP conference, that “further work is needed here before we (the Commission) can commit ourselves to any specific (solvency) regime (for IORPs)” was welcomed by the audience. Nonetheless, a CEIOPS – OPC (Occupational Pension Committee) representative reminded those present of the intention of the OPC to develop a Solvency II regime for IORPs.

## New EFRP publication “IORP Directive: A Catalyst for Change”

Returning to the Pension Funds Congress, EFRP used the opportunity to present its latest publication **IORP Directive: A Catalyst for Change** containing the results of its survey on **market experience of implementation of the IORP Directive**. The survey, carried out earlier this year gathers responses from 20 EU Member States. The publication is available to download at [www.efrp.org/](http://www.efrp.org/)

## No agreement on revised portability directive

The Employment, Social Policy, Health and Consumer Affairs Council meeting on 5 December discussed the amended portability directive. The amended proposal for a directive, which deals with preservation and acquisition of rights was high on the agenda of the Portuguese Presidency. Significant efforts had been made during working groups to secure agreement on a number of proposals across the broader social policy arena. Nonetheless, Council **failed to reach agreement**.

The main elements of the text proposed by the Commission relating to acquisition included a maximum ‘period of employment’ of **1 year**, maximum ‘minimum age for accrual of vested rights’ of **21 years**, maximum vesting for schemes members **over 25 of 1 year**, and a maximum vesting for **under 25s of 5 years**.

The Portuguese Presidency had in turn tabled a text which compromised on a number of issues. EFRP understands that the Portuguese proposal included changes in the area of scope – applicable only to periods of employment **after transposition**, lowered the

maximum vesting age to **23**, and proposed a maximum vesting period of **2 years**.

Despite these efforts member states were unable to reach the required unanimity. Both **Germany** and **Luxembourg** were unable to support the proposal due to the suggested vesting period, which they viewed as too low.

Indeed, Germany noted that it had already implemented reform in this area, from ten to five years and that to do so again would be illogical. Similarly, Luxembourg also maintained a call for a five year vesting period.

It is interesting to note that the Netherlands, who vetoed the original portability proposal were in a position to support the Portuguese text.

It is unclear at present what priority the proposal will be given during the **Slovenian Presidency** which begins 1 January 2008.

## Common principles on flexicurity adopted

On 5 December 2007 at the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) meeting, member states **adopted Common Principles on Flexicurity**.

While the **Council** was charged with adopting the common principles, following the Commission Communication “Towards common principles of flexicurity”, the **European Parliament** also commented on the process and called on the Council to adopt a balanced approach towards flexicurity including key principles such as adaptable and reliable contracts and investment in life-long learning.

The Common Principles were publicly **adopted** at the European Council meeting on December 14.

It is intended that the principles will form the basis of the next phase of the **Lisbon Strategy**, as focus turns to labour market issues.

The principles adopted underline that flexicurity:

- should enhance implementation of the **Lisbon Strategy**;
- combines **flexible and reliable contractual arrangements**, comprehensive **lifelong learning** strategies, effective **active labour market policies**, and **modern adequate and sustainable social protection schemes**;
- should be pursued according to the **individual needs of a Member State** ;
- should end **labour market segmentation**;
- should support **gender equality**;
- should promote dialogue between **all stakeholders** ;
- should remain fully compatible with **sound and financially sustainable public budgets**.

For further details see:

<http://register.consilium.europa.eu/pdf/en/07/st16/st16201.en07.pdf>

## **ECJ rules discrimination on age grounds can be justified**

**C-411/05 – F. Palacios de la Villa v. Cortefiel Servicios SA Cortefiel**

The European Court of Justice issued its judgement on October 16 in the case of *F. Palacios de la Villa v. Cortefiel Servicios SA* (Cortefiel). While the final rul-

ing was not surprising, the reasoning of the judgement followed an interesting course.

Mr. Palacios de la Villa claimed that the termination of his employment contract on the occasion of his having reached the **national compulsory retirement age** amounted to **dismissal of a discriminatory nature** as it was based solely on the grounds of age. Accordingly, he sought to have the national legislation enshrining compulsory retirement declared incompatible with Dir 2000/78 on equal treatment in employment and occupation.

Cortefiel argued in response that it was simply implementing the terms of legislation designed to implement a policy aim of promoting entry into the workforce to counter unemployment.

At first glance, the reference for a preliminary ruling does not appear well founded – as the Directive clearly states that it is **without prejudice** to national provisions laying down retirement age. However, it is of note that the ECJ held that while this is indeed the case, the **provisions of legislation** dealing with the practicalities of enacting retirement age are nonetheless subject to the Directive.

The ECJ inferred from the context in which the Spanish legislation was adopted that it was aimed at regulating **the national labour market**, in particular for the purposes of checking **unemployment**. The court held that the **legitimacy** of such an aim of public interest **cannot be called in to question** with regard to Directive 2000/78 and the EU and EC treaties since the promotion of a high level of employment constitutes one of the ends pursued both by the European Union and the European Community. Accordingly, relying on Directive

2000/78, the **ECJ held** that national legislation may implement compulsory retirement clauses based solely on the grounds of attainment of **age** and **fulfilment of social security requirements**, if these clauses are **objectively and reasonably justifiable** in the context of a **legitimate aim** relating to employment policy.

The full judgement is available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62005J0411:EN:HTML>

## Financial Services: “Call for evidence on substitute investment products

The European Commission has recently published a **“Call for evidence” on Substitute Retail Investment Products**. The Commission’s objective is to establish whether there is a real and significant risk to investor protection resulting from the different levels of product disclosure or intermediary regulation embodied in EU financial services legislation.

Attention is also drawn to the different factors that drive the promotion and sales of particular products (e.g. regulation, taxation, cultural preferences and distribution business models).

As a starting point the Call for evidence seeks to identify which investment products should be taken into consideration, as borderlines between financial, banking and insurance products are becoming increasingly blurred. These products, even though they are not part of the second pillar for retirement provision, they may nevertheless play a role for providing income during retirement age. In a second step, the Commission also wants to investigate whether patchy regulatory require-

ments lead to investor detriment. The main areas for investigation are:

- Different levels of product disclosure;
- Conduct of business rules;
- Conflicts of interest management by product originators and intermediaries;
- Point of sale rules;
- Unfair marketing/misleading advertising.

Those criteria should be taken into account when assessing whether investors are provided with the necessary information to understand properly the characteristics of substitute investment products. In order to avoid investors’ detriment, the Commission invites the contributors to assess whether: market forces could develop self-regulatory measures or, there is a need for public involvement i.e. Level 3 Committees could initiate dialogue with market participants or, action is required at Member State level.

A Feedback Statement summarising the replies received will be published in March 2008. On the basis of the responses received to this call for evidence and other inputs the Commission will in autumn 2008 issue a Communication with its assessment of whether corrective action is needed and identifying possible forms of proportionate response.

The Call for Evidence is available at:

[http://ec.europa.eu/internal\\_market/finances/docs/cross-sector/call\\_en.pdf](http://ec.europa.eu/internal_market/finances/docs/cross-sector/call_en.pdf)

## Supporters Circle Meeting 2008

The next Supporters Circle meeting will take place in Brussels on **18-19 June 2008**. Further details to follow.