

# Newsletter



MAY 2007, VOLUME 2

## EURO FINANCE WEEK 2007

### EUROPEAN PENSION FUNDS CONGRESS

The EFRP is pleased to announce it is co-organising in conjunction with the **MALEKI GROUP** the **EUROPEAN PENSION FUNDS CONGRESS** which will be held on the 21 November 2007 as part of **EURO FINANCE WEEK** (19 - 23 November) in Frankfurt am Main, Germany.

After the **highly successful event** in November 2006, we have decided to repeat it.

The Pension Funds Congress follows on directly from the **CEIOPS CONFERENCE** on 20 November. This back-to-back event therefore provides a **major opportunity** for **looking into the future** of private pensions as seen by **leading practitioners** and **key policy-shapers**.

*Details to follow...*

## EFRP MEMBERSHIP GROWS

- **UNIE VAN BEROEPPSPENSIOENFONDSEN (NL)**
- **ASOCIÁCIA DÔCHODKOVÝCH SPRÁVCOVSKÝCH SPOLOČNOSTÍ (SK)**

At its spring General Assembly of the Members held in Madrid on 23 April 2007, the EFRP welcomed on board two new member associations, the Dutch Association of Pension Funds for Professionals (*Unie van Beroeps-pensioenfondsen*) and the Slovak Association of Pension Funds Management Companies (*Asociácia dôchodkových správcovských spoločností - ADSS*).

- The **Association of Pension Funds for Professionals** represents 11 occupational pension funds for self-employed professionals in the Netherlands. It manages around €20 billion of assets with some 55,000 active members, 20,000 dormant members and 16,000 pensioners. It will be a full Member of the EFRP.

This means that along with VB and OPF all three Dutch pension fund associations are now in the EFRP.

- Slovakia's **ADSS** represents all 6 pension fund managing companies active in the second pillar - mandatory funded system. Slovakia's second pillar started on 1 January 2005 had accumulated assets worth some €0.792 bn by the end of 2006 with 1,538,000 people saving in it - equivalent to about 60% of the working population. ADSS has joined EFRP as an Observer.

The new Slovakian membership is particularly encouraging because, even though it means yet more diversity within its ranks - the EFRP is demonstrating that it can engage with different approaches to pensions.

Representing diversity is a must if the EFRP wants to continue to be the leading voice on funded pensions in Europe.

## IN THIS ISSUE...

- **New EFRP members**
  - **Association of Pension Funds for Professionals**
  - **ADSS**
- **EFRP Working Group on Solvency for IORPs**
- **Flexicurity - the solution to changing career patterns?**
- **Portability - second thoughts?**
- **Taxation**
  - **Nine Member States in firing line**
  - **new Commission initiatives seek to open political debate**
  - **CCCTB faces Member State doubts**

## SOLVENCY REVIEW FOR IORPs

### - EFRP WORKING GROUP PRESENTS PRELIMINARY OUTLINE REPORT

At its spring General Assembly of the Members, EFRP member associations received initial findings of the **EFRP Working Group** on a **Solvency Review for IORPs**.

The Working Group aims not only to establish the **quantitative impact** of applying Solvency II automatically to IORPs but – more importantly – to develop an **alternative solvency model** specifically for IORPs.

The EFRP model will share the same 'three pillar' and basic methodology as Solvency II for insurers but will also identify how differences in key variables justify a **different application of the same principles**.

**Equivalent, not identical, rules are what is needed.** The need for a solvency review for IORPs is inevitable due to the link between the IORP Directive (Article 17(2)) and the Life Insurance Directive. Calls for exactly the same solvency rules for insurers to apply to IORPs inspired by a 'level playing field' mantra need to be considered carefully as it is not always clear whether life insurers and IORPs are playing the same game on the same ground.

The question of such differences played a role in the decision taken by national pensions regulators sitting in the European Insurance and Occupational Pensions Committee (EIOPC) on 5 April 2006, who agreed to carry out a separate solvency review for IORPs outside the current Solvency II framework for insurance companies (see Newsletter November 2006, Volume 4).

The EFRP Working Group's initial ideas received a positive and thoughtful response from EFRP members. The Group will present a **draft report** in **October 2007** to the EFRP's autumn general assembly.

## IS FLEXICURITY THE SOLUTION TO CHANGING CAREER PATTERNS?

Flexicurity - the attempt to marry increased workplace **flexibility** with overall employment **security** for the work-force (see box overleaf) – was the topic of a one day **STAKEHOLDER FLEXICURITY CONFERENCE** held in Brussels on 20 April. 2007.

This is all part of the run-up to the Commission's **'Flexicurity' Green Paper** scheduled for June 2007 – and follows on from its **Green Paper on Modernising Labour Law** of 22 November 2006.<sup>1</sup> At the conference, representatives of the various stakeholders from across the EU gave presentations on approaches to flexicurity.<sup>2</sup>

### 'FLEXICURITY' – WHAT IS IT?

Unlike the negatively perceived system of 'workfare', 'flexicurity' is an attempt to combine **lower levels of job protection** with **higher levels of transition security** so that a worker moving out of one job can move quickly into another.

**Austria, Denmark, the Netherlands and Sweden** are seen as 'flexicurity forerunners' in the EU - the precise policy / tool mix varying between them. There has been high-level EU-level discussion of flexicurity for some time and it is now emerging into the wider, public domain.

The concept is generating controversy on both sides of industry. Previous discussions show that **employees** fear that the 'flexibility' arm will prove stronger than the 'security' arm – and **employers** fear the reverse as well as worries that there is a move to promote a model of what constitutes 'proper' work. The machinery at EU level for introducing flexicurity is not very powerful so much will depend on making out a clear and convincing case to get Member States to reflect about any possible future steps.

Flexicurity is likely to mean that **pension providers**

- must cater for a **fully mobile workforce in a permanent fluid state** and
- cope with **highly diverse career profiles**.

In short, the flexicurity debate will **reopen the portability** file for occupational pensions but in profounder form. It will mean designing pensions systems for job-switching, country-hopping workers who sometimes operate as freelance providers, sometimes as employees and sometimes take time out.

Although occupational pensions are not directly mentioned in the interim report, they fall under the general demand for "more modern social security systems". Other EU documents dealing with

<sup>1</sup> [http://ec.europa.eu/employment\\_social/labour\\_law/docs/2006/green\\_paper\\_en.pdf](http://ec.europa.eu/employment_social/labour_law/docs/2006/green_paper_en.pdf)

<sup>2</sup> [http://ec.europa.eu/employment\\_social/employment\\_strategy/flex\\_stakeholderconference\\_en.htm](http://ec.europa.eu/employment_social/employment_strategy/flex_stakeholderconference_en.htm)

flexicurity explicitly refer to occupational pensions and also to portability<sup>3</sup> – so the final report by the Expert Group as well as the Flexicurity Green Paper should be read very carefully. As we also understand that a pensions' transferability measure could be retabled in 2009, it is most likely to come cloaked in the virtues of flexicurity.

The final report by the expert group "is due soon".

#### ***Some useful EU introductory documents:***

- *European Commission online magazine "Social Agenda" special edition on flexicurity, 13 March 2006*  
[http://ec.europa.eu/employment\\_social/publications/2006/keaf05013\\_en.pdf](http://ec.europa.eu/employment_social/publications/2006/keaf05013_en.pdf)
- *Social Protection Committee "Flexicurity", May 2006*  
<http://register.consilium.europa.eu/pdf/en/06/st09/st09633-ad03.en06.pdf>
- *Employment Committee "Flexicurity", May 2006*  
<http://register.consilium.europa.eu/pdf/en/06/st09/st09633-ad02.en06.pdf>
- *"Flexicurity - Joint Contribution of the Employment Committee and the Social Protection Committee", May 2006*  
<http://register.consilium.europa.eu/pdf/en/06/st09/st09633.en06.pdf>

## **PORTABILITY**

### **- SECOND THOUGHTS AT LONG LAST?**

A last minute debate seems to be breaking out within the **European Parliament** as increasing numbers of MEPs realise the implications of what was voted through by the EP's EMPL Committee in March. Led by Thomas MANN (EPP-ED / DE - CDU) they are breaking ranks with Rapporteur Ria OOMEN-RUIJTEN (EPP-ED / NL - CDA) whose report would do away with vesting periods for the over-25s. In yet a further delay, the EP is due to vote in plenary in the week of 18 June 2007. Providing there is unanimity and every EP amendment is accepted this could allow Council to complete adoption of a 'portability' measure at the end of June.

Meanwhile, in **Council** we hear that the German presidency is continuing to tour the capitals of wayward Member States drumming up support for the unloved draft directive by threatening to name names if anyone votes against the directive. However, its hope of adopting the Directive by the end of May seems unrealistic and it is unclear whether it will be adopted under the German presidency at all. There are also indications that some Member States are considering demanding

higher social standards to be inserted into the directive so they can sink the directive in a 'worker friendly' manner. The Netherlands has now explicitly said that it will not support the draft law at the May Council meeting.

If Member States cannot agree amongst themselves the Directive risks being shelved rather than formally rejected. But if the Rapporteur does not drop her instant vesting requirement, the directive will have to go into a second reading. This would take us into the Portuguese presidency and the strict procedural timetable would mean that some sort of outcome would be due before the year's end.

The situation is very uncertain.

## **TAXATION**

### **- NINE MEMBER STATES IN FIRING LINE**

On 7 May 2007, as a result of EFRP complaints lodged in 2005 (see Newsletter, December 2005, Volume 5), the European Commission launched infringement proceedings against nine Member States.

The **Czech Republic, Denmark, Spain, Lithuania, the Netherlands, Poland, Portugal, Slovenia and Sweden** must each respond to the Commission's formal letters of notice. These target their rules by which dividend and/or interest payments to foreign pension funds may be taxed more heavily than dividend and/or interest payments to domestic pension funds.

Member States generally have two months to reply to such letters. The Commission will then decide whether their rules appear to infringe Art 56 of the EC Treaty on free movement of capital. If it thinks Member States have a case to answer, the Commission will then issue a reasoned opinion before waiting a further two months before it considers whether to refer them to the Court of Justice.

The Commission is still considering possible action against other Member States.

### **- NEW COMMISSION INITIATIVES SEEK TO OPEN POLITICAL DEBATE**

On 19 December 2006, the Commission launched three **Communications** to encourage better coordination of national tax systems.

**Cross-border tax barriers** arise not only because of unfair tax **discrimination** but also because as

<sup>3</sup> See documents referred to in the box on 'flexicurity' overleaf and Commission Communication "Time to move up a gear" COM(2006)30, 21.01.2006.  
[http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006\\_0030en01\\_01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0030en01_01.pdf)

they do not fit together cases of double taxation or double non-taxation arise – **'system mismatch'**.

Whereas tax discrimination can be tackled 'negatively' by **direct enforcement** of Treaty provisions, 'system mismatch' cannot - because there may be no discrimination. 'Positive' steps to address 'system mismatch' have to be very gentle because the national veto on tax matters makes reform very difficult at EU level. The December Communications are part of such a 'softer' but more wide-ranging approach to **coordinate national systems**.

The main Communication on **coordinating Member States' direct tax systems**<sup>4</sup> in the internal market briefly outlines the Commission approach and issues it intends to tackle. As the Communication is specifically addressed to the Member States and the European Parliament the idea seems to put the policy spotlight on **tax barriers rather than** come up with **new technical solutions**. The CCCTB project (see below) is referred as are the general problems faced by multinationals. Interestingly, a brief albeit non-committal reference is made to the issue of different national approaches to the tax transparency of certain types of entity – a link between the tax debate and the asset pooling debate.

The two other Communications refer to treatment of

- **tax losses** in cross-border situations for companies either with a branch or corporate presence in more than one Member State.<sup>5</sup> This reviews case law and proposes a range of techniques to developing a system of cross-border tax relief.
- **exit tax** – i.e. treatment of capital sums where individuals or companies relocate or move assets to another Member State.<sup>6</sup>

The Communications seem intended to generate awareness, debate and, ultimately, if not support, at least moral pressure on Member States to coordinate their approaches.

#### - CCCTB FACES MEMBER STATE DOUBTS

The **Common Consolidated Corporate Tax Base (CCCTB)** project (see Newsletter July 2006,

Volume 3),<sup>7</sup> is a further element in the Commission's 'coordinatory' approach on taxation. The Commission has published a communication on progress achieved on CCCTB in 2006 and presenting its next steps on CCCTB.<sup>8</sup> The **Commission "remains committed to presenting a legislative proposal in 2008"**.<sup>9</sup>

However, CCCTB is encountering increasingly vocal opposition from Ireland. In February, Ireland's Department of Finance concluded that the initiative "cuts across national sovereignty and subsidiarity" and its practical effects "would not be supportive of European business."<sup>10</sup> The fear is that low Irish rates of corporate taxation could be threatened by the project. Of wider interest for an EU audience were the contents of a recently leaked Irish Department of Finance memorandum which is said to set out the positions of all EU Member States on CCCTB:

#### *Member State attitudes to towards CCCTB*

'YES'	'No'	'SCEPTICAL'
✓ Austria	✗ Ireland	? Belgium
✓ France	✗ Latvia	? Bulgaria
✓ Germany	✗ Lithuania	? Cyprus
✓ Hungary	✗ Malta	? Czech Rep
✓ Italy	✗ Slovakia	? Denmark
✓ Luxembourg	✗ United Kingdom	? Estonia
✓ Netherlands		? Finland
✓ Spain		? Greece
		? Poland
		? Portugal
		? Romania
		? Slovenia
		? Sweden

source: *Irish Times*, 23.04.2007<sup>11</sup>

If this information is correct, it does not bode well for the CCCTB project although it should be noted that apart from the UK, all major Member States are in favour of CCCTB.

<sup>7</sup> CCCTB is investigating the feasibility of allowing companies established in at least two Member States the option of computing group taxable income according to one set of rules. This would be on the basis of a common EU tax *base* which nevertheless allows each Member State to set the tax *rates* it chooses.

<sup>8</sup> COM(2007)223, 02.05.2007

<sup>9</sup> [http://ec.europa.eu/taxation\\_customs/resources/documents/common/whats\\_new/COM\(2007\)223\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/whats_new/COM(2007)223_en.pdf)

<sup>10</sup> Communication COM(2007)223, page 7.

<sup>11</sup> <http://www.finance.gov.ie/viewdoc.asp?DocID=4543>

11

<http://www.ireland.com/newspaper/finance/2007/0423/1176455118011.html>

<sup>4</sup> COM(2006)823

[http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006\\_0823en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0823en01.pdf)

<sup>5</sup> COM(2006)824

[http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006\\_0824en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0824en01.pdf)

<sup>6</sup> COM(2006)825

[http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006\\_0825en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0825en01.pdf)