

Newsletter



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for Retirement Provision

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CENTRAL AND EASTERN EUROPE

EFRP CEEC FORUM STARTS UP IN BRATISLAVA



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On 7 March 2006, the Central European and Eastern Countries (CEEC) Forum held its inaugural meeting in Bratislava, Slovakia. The meeting was hosted by the Slovakian Association of Pension Funds Management Companies (ADSS) and chaired by Mr. Csaba NAGY, Chairman of the Hungarian Association of Pension Funds, Stabilitas.

The Forum brings together private pension institutions – operating both mandatory and voluntary schemes – from CEE countries that have introduced multi-pillar pension reform over the last decade.

Representatives attended from Croatia, Czech Republic, Estonia, Latvia, Lithuania, Hungary and Slovak Republic with Romania, Kosovo and Bulgaria sending apologies.

The Forum aims to be an appropriate format to:

- discuss issues common to CEE pension systems
- share experiences on pension systems
- decide what points could be taken to the EU level in Brussels for action
- promote common European values in pension systems.

The meeting concluded that common issues will be taken up by the EFRP in its Working Programme to ensure that specific features of CEE pension systems are represented to EU bodies and decision makers.

The first meeting provided a good idea of the issues CEE industry representatives would like to discuss amongst themselves and with the regular EFRP Membership:

- implementation of the IORP Directive
- mobility of workers – including but not limited to transfers of funded pension capital
- investment restrictions of pension funds operating in the CEE region
- payout phase of funded pensions
- adhesion to the Eurozone and pension reforms

The decision to set up a CEEC Forum was taken at the EFRP General Assembly of the Members in Paris on 26 October 2006 since the Federation had established that the pension issues the CEE countries have to deal with require specific attention.

Further meetings will take place at regular intervals. The Forum is still open for representatives from other Member States that would like to join.

PORTABILITY DIRECTIVE

TRANSFERS LIKELY TO BE SHELVED

INSTANT VESTING FOR OVER 25S

At the **Council** meeting of 1 December 2006, many Member State social affairs ministers expressed a preference for a portability directive without transfers. Although formally non-binding, this was a good indicator of the mood across the EU. This outcome - the so-called 'Finnish compromise' - has now been taken forward by the incoming German Presidency. German officials have toured Member State capitals with a revised

'Finno-German' text to test the water. The latest text was discussed by national technical experts at the Council's Social Questions Working Group on 7 March 2007. Although the outcome of this meeting has not been published, the portability directive looks set to become a vesting and preservation directive with all references to portability struck out. Many Member States seem to favour trying to tie the 'fair treatment' of dormant rights clause to a 'catalogue' of specific techniques.

CURRENT EU INSTITUTIONAL POSITIONS - AN EFRP ASSESSMENT

	Commission proposal	Council position	emerging EP position?
acquisition conditions	- waiting: ≤ 1 yr - vesting: ≤ 2 yrs - max min age 21	- (deleted) - vesting: ≤ 5 yrs - max min age 25	- delete? - no vesting for over 25 year olds?
preservation principle	- 'fair <u>adjustment</u> ' - <u>non-penalisation</u>	- 'fair <u>treatment</u> ' - 'catalogue' of examples - (deleted)	- 'fair <u>and equal</u> treatment'? (via ECON) - 'catalogue' approach - deleted?
transfer	- create a worker's right to transfer	- (deleted)	- demand country reports on transfers? - call for actuarial convergence? (ECON)
scope	-	- 'no retrospective' application - other exceptions clause	- [unclear] - other exceptions clause?
phasing in of Directive	- max 5 years	- max 10 years	- unclear
<u>comment:</u>	ready to move towards Council text but wants - stronger acquisition and vesting element (likes EP amends re vesting and minimum age) - to re-table transfer element later	Tries to reduce - hidden risk in preservation article – but does it? - cost impact of retroactive effects	Rapporteur awaiting Council position – must gain cross-party support amongst all MEPs in plenary. Some points from ECON referred to above might be included.

In parallel with the Member State discussions inter se, Council has been negotiating behind closed doors with the European Commission and European Parliament to see whether a reduced

directive is acceptable and whether other deals need to be done. If the Commission is unhappy with a reduced proposal, it could withdraw it. If Parliament is unhappy with the approach it could trigger a second reading which could have unpredictable results.

To date, attitudes within the **European Parliament** are hard to gauge. The **Employment and Social Affairs Committee** (EMPL), the main EP committee dealing with this proposal, voted on compromise amendments on 21 March 2007 approving amendments which follow the main outlines of the Council proposal but which appear to differ on critical aspects. The EMPL proposals envisage having instant vesting for everyone over 25. It wants a short phasing period and there may be a difference of view with Council over application to accrued entitlements to date. All MEPs will now have a chance to vote on the draft directive in the plenary meeting in April or May. EP Rapporteur Ms **Ria OOMEN-RUIJTEN** (EPP-ED / NL - CDA) was complimented on her Report by the European Commission.

The **German Presidency** still hopes to achieve Member State policy agreement on a portability measure at the Council meeting of 30 – 31 May 2007. But any delayed treatment by the EP could prevent this.

In the eyes of the EFRP, the reduced Directive is better than the original Commission proposal. But 'better' is not 'good': there are unanswered questions that cannot be addressed by an amendment here and an amendment there. We are concerned that the interaction with the IORP Directive's cross-order provisions has not been thought through and that this reflects a deeper design flaw in the directive – a failure to make clear what are social policy elements and what are financial services matters. Sorting this out would mean reworking the entire draft directive. Given that portability issues will be re-tabled again this summer with the Commission Green Paper on 'flexicurity' a sensible approach would be to put the current proposal on hold until this debate is over – and we have time to digest the discussions of the last 18 months.

IORP DIRECTIVE IMPLEMENTATION

CROSS-BORDER ACTIVITY SET TO TAKE OFF

The number of Member States not having notified their implementing legislation now stands at one. **France** was finally regarded as having fully notified early this year. On 24 January, the case before the European Court of Justice (ECJ) against the **UK** (Case C-367/06) was withdrawn as issues concerning under-funding recovery mechanisms and Gibraltar were sorted out. However, on 22 December 2006, the Commission case against **Italy** was registered at the ECJ for failure to notify fully (Case C-530/06).

New EU Member States **Bulgaria** and **Romania** – as of 1 January 2007 - have submitted their national laws they say implement the Directive. These are currently being assessed by the Commission.

But this slow progress tells us nothing about levels of real implementation. The Commission is still continuing with its actions against the **Czech Republic, Hungary** and **Poland** – all three of whom are still listed by the Commission as having fully notified. Infringement proceedings against them were launched in October 2006 when Letters of Formal Notice were sent out. On 21 March, the Commission decided to issue Reasoned Opinions – the step preceding legal action at the ECJ – against the Czech Republic and Hungary. The Commission is still reviewing responses from Poland to decide whether it too will be sent a Reasoned Opinion.

On a more positive note, **Belgium's** new IORP law came into force at the beginning of the year in a fanfare of publicity with reports that three multinationals are already considering setting up EIORPs in Belgium.

There is confirmation that cross-border activity is slowly taking off. **CEIOPS**, the Level 3 Lamfalussy body for national supervisors, has issued figures as at 31 January 2007.

Although CEIOPS states that no major difficulties have shown up in the notification procedures and that the CEIOPS Budapest Protocol for the co-operation of Member States in the area of cross-border activity is working well in practice, it still notes that experience to date has revealed that some – unspecified - features of the IORP Directive might benefit from further clarification. CEIOPS says that national competent authorities

work well together. It anticipates many new cross-border IORPs in the future.

At the same time CEIOPS is beginning its review of aspects of the IORP Directive. This will culminate in a report in October this year and should be followed by a review of the 'Budapest Protocol' – the multilateral memorandum of understanding between key national supervisors for dealing with the cross-border activity by IORPs. And next year the Commission should be launching its review of the IORP Directive.

Home Member State	Host Member State	No. of cases	Relation to the Dir.
Germany	Luxembourg	1	before
Ireland	United Kingdom	15	
United Kingdom	Greece	1	
	Germany	1	
	France, Poland	1	
	France, Netherlands	1	
	France, Sweden, Spain, Poland	1	
	France, Luxembourg	1	
	Czech Republic, France, Luxembourg, Netherlands	1	
	Germany, Slovak Republic, Sweden	1	
	Belgium, Ireland	1	
	Ireland, Netherlands, Spain	1	
	Netherlands	3	
	Ireland	10	
Finland	Estonia	1	after
Germany	Austria	1	
Ireland	Belgium	1	
	United Kingdom	3	
Luxembourg	United Kingdom, Netherlands, Germany, France, Poland, Austria, Belgium, Italy, Spain, Sweden	1	
United Kingdom	Ireland	1	
	Germany	1	

FUNDING AND EMPLOYER INSOLVENCY

ECJ JUDGMENT IN *ROBINS* IMPACTS ON EU

On 25 January 2007, the European Court of Justice (ECJ) handed down its judgement in the *Robins Case C-278/05*. This case was a query by the English High Court to the ECJ about the meaning of Article 8 of the **Insolvency Protection Directive**.¹ Although it concerned UK

problems relating to DB schemes and also pre-dates UK implementation of the IORP Directive, its implications will still be felt across the EU.

The EFRP warned readers about this case (see Newsletter, July 2006). Had the opinion of Advocate General KOKOTT (an official advisor to the ECJ) been followed, the consequences would have been serious (possibly impacting on funding or requiring guarantee systems). But the ECJ concluded that where an employer goes into insolvent liquidation and the relevant scheme is underfunded, Article 8 of the Insolvency Directive does **not** demand

- a **full guarantee** of the pension rights has to be provided – a minimum level is also possible or
- Member States **themselves fund** any shortfall.

Nevertheless the ECJ also found that despite it being **impossible to tell from the Directive** what the **minimum level** of cover required was, **UK law was incompatible** with the Directive because *Robins* ex-employees would get less than 50% of their expected pension.

Whatever the impact in the UK; the ECJ advice on the meaning of Article 8 in *Robins* will still have serious policy implications at EU level.

But the ECJ avoided taking up the discussion included in the Advocate General's opinion on arguments put forward by the UK – as well as Ireland and the Netherlands who intervened in the case – concerning the relationship between the IORP Directive and the Insolvency Protection Directive. This silence may mean that the Court prefers the assessment of the relationship between the two directives to be conducted in the relative calm within the upcoming review of the IORP Directive set for 2008.

The European Commission was implicitly criticised by the ECJ for rubberstamping the UK system as compliant with the Directive. The judgment means that employer insolvency will be considered again at EU level and may feed into the solvency review for pension funds. We note also that a new item has appeared on CEIOPS working programme for 2007 on occupational pensions: **"Insolvency Protection Institutions in the case of insolvency of an employer."**

¹ Council Directive 80/987/EEC of 20.10.1980 on the approximation of the laws of the Member states relating to the

protection of employees in the event of the insolvency of their employer – Official Journal 1980 L 283, p 23.