Newsletter

May 2009 , Volume 2

European Federation for Retirement Provision

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Supporters' Circle event

EFRP invites you to join the exclusive Supporters' only meeting - 16 & 17 June 2009 - Brussels

This years' event will be structured into two sessions: the regular briefing session and a brainstorming session on pensions in 2020.

Topics to be included in the **briefing session**:

1. Follow-up of the EC Consulation and Open Hearing on the solvency rules for IORPs;
2. An helicopter view on the proposals for a new European financial supervisory structure;
3. proposal for a Directive on Alternative Investment Fund Managers
4. Pan-European pension funds— case study with a multinational;
5. EFRP survey on DC pension provision ;

Following the regular briefings, we will set up a **brainstorming session** on pensions in 2020. The idea behind this session is to hear the views of those that provide professional services to pension institutions on what workplace pensions could look like in 2020.

A personalised invitiation is due to follow in the following days. Please mark your diary as follows:

Tuesday 16 June 2009 : Supporters' Circle dinner as from 7.00 PM

Wednesday 17 June 2009 : Supporters' Circle meeting as from 8.30 AM

EFRP Cocktail - 26 May 2009 - Brussels

EFRP would like to invite Supporters to attend its cocktail at the eve of the EC Open Hearing on IORPs - **26 May 2009** - Brussels

To register, please send an email to efrp@efrp.eu

NEW FINANCIAL SUPERVISORY ARCHITECTURE

EFRP NOTES OMISSION OF IORPS IN "DE LAROSIÈRE" REPORT

In its response to the "de Larosière" report[1] and the Commission's Communication related to it[2], EFRP has expressed some concern about the **absence of any considerations of the implications of the proposed changes on IORPs**.

The "de Larosière" report had been commissioned in the middle of the financial crisis last year by President BARROSO to **re-consider the structure of financial supervision** in Europe. At an accelerated timetable, the recommendations of this High Level group are now considered at EU level.

It is expected that the Commission will publish a Communication on **27 May 2009** to set out its policy choices. These proposals will then be discussed at the European Summit in June with the objective to have a legislative proposal ready after the summer break.

One of the issues that has drawn particular attention from EFRP is the proposed replacement of CEIOPS by a "European Insurance Authority". In our opinion such a proposal lacks acknowledgement of the differences between pension funds or IORPs and insurers and leaves unclear the status of work of CEIOPS in the occupational pension sector.

For EFRP a simple name change of the authority is not sufficient. **Fundamental issues need to be discussed** because these authorities are intended to get new functions and power that do not fit for IORPs.

To reflect that the authority has **double competences,** EFRP recommends the decision making structure be double headed and the requirement should be introduced for some members of the governing board and executive to have recent pensions supervisory experience.

As an alternative to the "European Insurance Authority" model, EFRP has proposed different scenarios to the Commission that provide a better guarantee that the specificities of IORPs will be properly considered at EU supervisory level.

- IORPs could be placed under a **separate body** from insurance;
- A **single European supervisory authority** organised into divisions for each sector in which occupational pensions would be a separate sector.
- A **twin-peaks model** with a single authority for prudential supervision and another for market conduct for all financial services providers.

The EFRP restated also **concerns about further harmonisation of prudential regulation for IORPs**.

EFRP has expressed support for:

1. the need to address the **pro-cyclicality** of existing capital requirements in the banking and insurance sector
2. EU Commission's intention to come to grips with the **standard setting process of the IASB** in particular in relation to the mark-to market accounting rules.

The full EFRP response is available at the EFRP website www.efrp.eu

1. http://ec.europa.eu/internal_market/finances/docs/de_larosiere_report_en.pdf
2. http://ec.europa.eu/commission_barroso/president/pdf/press_20090304_en.pdf

REMUNERATION IN FINANCIAL SERVICES

EU COMMISSION TABLES RECOMMENDATIONS

The EU Commission has adopted - 29 April 2009 two recommendations related to remuneration schemes of executives. The first one concerns the remuneration of the "**risk-taking staff in financial institutions**, while the second tackles the issue related to the remuneration of **directors of listed companies.**

Both recommendations aim at restoring confidence in financial services operators by promoting the long-term sustainability of companies.

RISK-TAKING STAFF ALL FINANCIAL INSTITUTIONS[1]

In order to reduce the "perverse incentives" and excessive risk-taking by individual staff, the Recommendation invites the Member States to:

- require a balance between the core-pay and the bonus;
- defer the bonus payment so that the performance and risk taking can be assessed throughout the business cycle;
- allow companies to reclaim the bonuses;
- increase the remuneration policy transparency and ensure the disclosure of facts and figures to the stakeholders;
- entrust the Supervisors with the tasks controlling the applications by institutions of sound remuneration.

This recommendation **applies** *inter alia* **to pension-fund risk-taking staff**, i.e. people performing activities having a material impact on the risk profile of the pension fund. EFRP regrets that in the rush of the crisis, solutions aimed at solving issues arisen in the banking and credit industry, are automatically extended to other financial institutions as pension funds without previously assessing their adequacy to those very different and mainly non-for profit institutions.

DIRECTORS LISTED COMPANIES[2]

The Recommendation on the regime for the remuneration of directors of listed companies, complementing previous Recommendations 2004/913/EC and 2005/162/EC, invites Member States to:

- require a balance between fixed and variable pay , between long and short term performance criteria of directors' remuneration, and deferment of variable pay;
- cap golden parachutes and ban the latter in case of failure;
- allow companies to reclaim variable pay paid on the basis of manifestly misstated data ;
- extend certain disclosure requirements to improve shareholder oversight ;
- ensure that shareholders attend general meetings where appropriate and make considered use of their votes regarding directors´ remuneration;
- provide that non-executives should not receive share options as part of their remuneration to avoid conflict of interests;
- strengthen the role of the remuneration committee.

The Commission hopes that those Recommendations, although **non-binding**, will encourage Member States to legislate into the right direction.

It is noteworthy that the relevant Recommendations adopted earlier in the same field have been widely ignored.

An evaluation Report on Member States' application of both Recommendations is forecasted within a year as well as legislatives proposals to bring the remuneration schemes within the scope of prudential oversight.

1. http://ec.europa.eu/internal_market/company/docs/directors-remun/financialsector_290409_en.pdf

2.http://ec.europa.eu/internal_market/company/docs/directors-remun/directorspay_290409_en.pdf

HEDGE FUNDS & PRIVATE EQUITY

COMMISSION PROPOSES LEGISLATION FOR ALTERNATIVE INVESTMENT FUNDS

As part of the response to the financial crisis, the European Commission has issued 29 April 2009, a proposal for a Directive[3] on **Alternative Investment Fund Managers** (AIFM). The proposed Directive aims:

- to establish a harmonised EU framework for monitoring and supervising the risks that AIFM pose to their investors, counterparties, other financial market participants and to financial stability; and
- to permit, subject to compliance with strict requirements, AIFM to provide services and market their funds across the internal market.

For the scope of the Directive, AIF are defined as **all funds that at present are not harmonised under the UCITS Directive.**

The AIF sector in the EU is relatively diverse and large as well: the AIFM managed around €2 trillion in assets at the end of 2008 . Hedge funds, private equity funds, commodity funds, real estate funds and infrastructure funds, among others, fall within this category. The main regulatory component of the proposed legislation is an obligation for EU-based **managers** of AIF **to register and disclose** their activities, in order to improve oversight and avoid systemic risks.

The obligations are **not applied to the funds themselves, but only to their managers** since *"it is the manager who is responsible for all key decisions"* argued EU Internal Market Commissioner Charlie McCREEVY.

Although milder than expected, the proposal has been coldly welcomed by the sector. Florence LOMBARD, executive director of **AIMA (**Alternative Investment Management Association), which represents the global hedge fund industry has described it as: *"Hastily prepared and without consultation, the directive contains many ill-considered provisions which are impractical and may prove unworkable. The unintended consequences of these measures may put thousands of jobs in several major European industries under threat and slow down any economic recovery"*. Also the private equity sector (The European Private Equity and Venture Capital Association, , in short **EVCA**) has expressed its concerns as regards the thresholds set out by the proposal that will punish middle-market companies, which lie at the heart of corporate Europe.

3. http://ec.europa.eu/internal_market/investment/alternative_investments_en.htm#proposal