Newsletter

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European Federation for Retirement Provision

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WWW.EFRP.EU

EFRP INVITES SUPPORTERS TO REGISTER TO BENEFIT FROM ALL NEW FEATURES OF ITS REDESIGNED WEBSITE

On 13 July 2009 EFRP launched its long-awaited website revamp on www.efrp.eu . The new website was specifically designed to serve members, supporters and registered visitors with better information and an enhanced surfing experience. At the same time, EFRP changed its domain name from .org to **.eu** demonstrating our European identity.

The content of the website has been expanded by including an extensive overview of the key issues facing workplace pension provision in Europe and introducing a list of frequently asked questions.

By **registering** on our website, Supporters will be provided with:

- automatic email alerts whenever new EFRP documents and news items become available;
- special access to the **EFRP publications** library containing the EFRP Newsletters;
- special access to the **EFRP events** library containing supporting documents for the annual Supporters' Circle event in Brussels.

To register Supporters are invited to click the following link:

http://www.efrp.eu/Home/ctl/Register.aspx?returnurl=%2fDefault.aspx

Upon completion of all the requested information you will receive an email confirming the registration process has been successful. Following your registration, EFRP will grant you your special website rights as Supporter.

DIARY MARK— upcoming EFRP events

18 September 2009 - Sofia: BASPSC conference with EFRP CEEC Forum on multifunds - implementation and prospects in the pension systems in the CEEC

17 November 2009 - Franfurt: EURO FINANCE WEEK—European Pension Funds Congress

NEW FINANCIAL SUPERVISORY ARCHITECTURE

EFRP CONCERNED ABOUT EIOPA'S ROLE FOR IORPS

Following the "de Larosière Report", commissioned by President BARROSO, the Commission has issued on 27 May 2009 a Communication[1] setting out ideas to reform the European financial supervisory structure. The Commission followed closely the recommendations of "de Larosière report": a double headed structure with a body at **macro-level** responsible for systemic financial risks (European Systemic Risk Board), and one for **micro-level** supervision (European System of Financial Supervisors). This ESFS will be formed through a "network of national financial supervisors working in tandem with new European Supervisory Authorities" to supervise individual institutions. There will indeed be three new European Authorities[2] tasked with drawing technical standards for supervision and solving any disputes between national supervisors.

In its response to the de Larosière report, EFRP expressed concerns about the omission of pension funds (IORPs) into this High Level Report. It also criticised de Larosière proposal to replace CEIOPS by a European Insurance Authority (EIA). The subsequent Commission's Communication of 27 May 2009 proposed a name change into **European Insurance and Occupational Pensions Authority (EIOPA).** However, the name change has not taken away our concerns as to the objectives, composition, responsibilities and tasks of this new authority. Even if EFRP sees the **merit of some of the proposed competences** for ESFS, such as settling disagreements between national supervisors, drawing up interpretative guidelines and recollecting micro-prudential information, there remain areas where EFRP has strong reserves on the competences of the EIOPA. The objective to develop a **single set of harmonised rules** (the 'single rule-book'), directly applicable to all financial institutions active in the single market, is just one example of a laudable objective in theory but unpracticable if it has to apply to banking as well as to IORPs. Such an approach obviously ignores the specificities of the occupational pensions markets in the EU but it may well be that such rules increase systemic risk rather than decrease it. The EFRP pleads for the inclusion of **sectoral approaches within the single rule book** having regard to the different level of harmonisation in their EU level regulation reached by, for instance, IORPs compared to insurance. Following its 27 May 2009 Communication, the European Commission will come out with its package of legislative proposals on European financial services supervision on **23 September 2009**. The package is to include 4 Regulations covering the creation of the three supervisory authorities and the European Systemic Risk Board (ESRB). It will also include a proposal for a Council Decision governing the relationship between the institutions involved. The Regulations and Decision will be accompanied by a "Commission Services staff working document" outlining the Commission's plans for the **revision of the sectoral Directives** to take into account the new supervisory structures. The proposals for revisions to the sectoral directives are expected to follow **on 14 October 2009.**

1. COM(2009)252—European Financial Supervision
2. European Banking Authority (EBA), European Insurance and Occupational Pension Authority (EIOPA), European Securities and Markets Authority (ESMA)

DC Pension Provison

EFRP undertakes wide-ranging DC survey

EFRP is giving high priority to the preparation of a study on DC pension provision in Europe. The aim of the project is to give an overview of the incidence and design of DC schemes throughout Europe. The target date for the first results of this European survey is the European Pension Funds Congress on 17 November 2009 in Frankfurt.

In the past decades there has been a major shift from defined benefit (DB) plans towards defined contribution (DC) schemes. In traditional DB countries – like the UK and Ireland – DC schemes are increasingly becoming the dominant pension plan. Newly introduced pension schemes – such as in the central and eastern European countries – have largely been of the DC type. The trend is also perceptible in countries such as Spain, Italy, Portugal and France.

The recent financial crisis has also highlighted that proper DC plan design is of the utmost importance. DC members being close to retirement with a significant exposure to equities most likely have been severely hit by the fall in asset prices.

The EFRP research addresses the following key issues with respect to DC plan design in the various Member States:

Coverage – What mechanisms – mandatory participation, auto-enrolment, collective bargaining – are in place to ensure high participation of employees?

Contributions – What determines the level of contributions, such as minimum contributions and matching contributions by employers?

Providers – What providers – pension funds, insurance, mutual funds – are administering the DC plan and who decides on the pension provider?

Investments – Are investment restrictions – for example on foreign securities – imposed? Are plan members offered investment options and do they receive advice to make proper choices? Is a default portfolio available and does it take a life-cycle approach?

Charges and fees – Does the regulator set maximum management fees and what is the actual size of charges and fees?

Pay-out phase – Is accumulated pension capital distributed as a lump sum payment, programmed withdrawal or annuity?

Communications – What information must be provided to the plan members? How often should this information be communicated and in what form?

Governance – What arrangements are in place to meet the interests of the plan members? Are plan members involved in the decision making process of the pension plan?

TAX DISCRIMINATION OF FOREIGN PENSION FUNDS

COMMISSION AND COURTS' DECISIONS ARE PRODUCING TANGIBLE RESULTS

In its press release of 6 July 2009, EFRP has expressed satisfaction noting the recent and significant developments regarding the discriminatory taxation of foreign EU based pension funds. Indeed, following the complaints lodged by EFRP in December 2005, the Commission has initiated a number of infringement proceedings which have led to most of the Member States aligning their system to European Law by withdrawing their discriminatory regimes.

Today, seven countries are deemed as complying with the free movement of capital, while 2 cases are pending before the ECJ, ten are still prosecuted by the Commission.

Denmark and **Finland** are the latest Member States against which the European Commission has taken action the 25 June 2009 inviting them to change their legislation and end discriminatory taxation against foreign funds, shortly after it has sent a reasoned opinion to **Poland** for the same reason. Prosecutions are showing their positive effects as several countries against which actions have been taken, are now heading in the right direction. The most blatant example is given by **Spain** which, soon after having being brought before the ECJ, has let known through the voice of its Ministry of Economy and Finance that it is preparing amendments to the Spanish non-residents income tax act in order to end the discriminatory treatment of non-resident EU.

In the **Netherlands** and **Austria,** tax authorities have unilaterally started reimbursing dividend withholding tax claims by non-resident (EU and EEA based) pension funds. The Dutch tax authorities have said that the decision was triggered by ECJ case law developments and decisions of the Dutch Supreme Court supporting them.

In **France**, the judicial power (through the French Supreme Court) has sided with four Dutch pension funds disputing the validity of French Statements of Practice which deny a withholding tax exemption on French source dividends to non-resident pension funds. The French Government will now need to take a formal position on this.

From the above it transpires that an increasing number of the originally identified 18 EU Member States have either already aligned their legislation with the EC Treaty or have promised to do so, while others are still negotiating with the Commission including Denmark, Finland, **Germany**, and **Sweden.**

17 November 2009

EURO FINANCE WEEK, Frankfurt-

European Pension Funds Congress

Topics to be discussed:

- **DC pension provision in Europe**
- **Securing pension benefits**
- **Responsible and sustainable investments**
- **Pension funds governance**