Newsletter

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European Federation for Retirement Provision

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EUROPEAN COMMISSION (2009-2014)

BARROSO II KEEN TO WORK ON PENSIONS

On 16 September 2009, the European Parliament has agreed to re-appoint President BARROSO for a second term as President of the European Commission. In his political guidelines, which he had written to find support in the Parliament for a second term, President BARROSO has listed **demographic change** as a key priority for the next Commission. For the President, the financial and economic crisis has shown:

- the importance of the European approach to pension systems;
- the interdependence of the various pension pillars within each Member State;
- the importance of common EU approaches on solvency and social adequcy;

The President's statement also underlined that **pension funds are an important part of the financial system**. One outcome from the President's remarks may be a Commission Green Paper on "pensions" in 2010. Another - likely - initiative could be a Commission proposal to review the IORP Directive (in 2012 ?). Such a timeframe would allow the legislative phase for a revision of the IORP Directive to finish during this Parliamentary term. In such a scenario the **reviewed IORP Directive might come into force in 2016.**

DIARY MARK— upcoming EFRP events

17 November 2009 - Franfurt: EURO FINANCE WEEK—

European Pension Funds Congress

Key note addresses: **Ms. Sharon BOWLES,** Chair Committee on Economic and Monetary Affairs, European Parliament; **Mr. Elemér TERTÁK,** Director, Internal Market and Services DG, Directorate H - Financial Institutions, European Commission

Topics to be discussed: **DC pensions in Europe, Security of pension benefits, and Social and Responsible Investments**

Programme and registration form available on www.efrp.eu

NEW FINANCIAL SUPERVISORY ARCHITECTURE

NEW BODY WILL FOCUS ON INTERLINKAGES BETWEEN FINANCIAL INSTITUTIONS

The European Commission has published on 23 September 2009 a proposal for a Regulation to establish a **European Systemic Risk Board**—ESRB. This new body will be responsible for the oversight of the macro-prudential aspects of the financial system. It will focus on the interactions between financial instittuions and the linkages between financial institutions and the broader financial system.

TAKS AND POWERS

The new body is expected to issue **risk warnings and recommendations** to the Community more specifically Member States, European Supervisory Autorities or national supervisory authorities. However, the ESRB risk warnings and recommendations will not be legally binding for the addressees. Meaning, that the ESRB will not have the power to impose Member States or supervisory authorities to implement specific measures to address the potential unbalances in the financial system. The addressees have though an **explain obligation** in case of inaction following a recommendation (= comply or explain principle).

The ESRB will decide on a case-by-case basis whether the risk warning or the recommendations will be publicly available.

Apart from issuing such risk warnings and recommendations, the ESRB will provide **assessments of the macro-prudential situation** in Europe. For this task the ESRB will rely extensively on data from the ECB and the European Supervisory authorities.

It is no surprise that the **Secretariat of the ESRB** will be held by the **ECB.**

COMPOSITON

The decision making body of the ESRB will be the **General Board** composed of 61 Members. 33 Members with voting rights and 28 without voting right. The General Board will decide by simple majority.

Members with voting rights are:

- Governors of all EU-27 national central banks;
- President and Vice-President of the ECB;
- Member of European Commission;
- Chairpersons of the three European Supervisory Authorities;

Members without voting rights are:

- Member State representative of competent supervisory authority;
- President of the Economic and Financial Committee, a Council advisory Committee;

The **Chair of the ESRB** will be elected among the governors of EU-27 central banks, the President and Vice-President of the ECB.

To overcome a tortuous decision making process with 61 persons, a **Steering Committee** will prepare the meetings of the General Board. It will be composed of 12 persons:

- Chair and Vice-Chair of the General Board;
- Chairpersons of the three European Supervisory Authorities;
- Member of the European Commission;
- President of the Economic and Financial Committee;
- 5 Members of the General Board who are also Member of the General Council of the ECB;

The General Council of the ECB includes all the EU-27 Governars of the national central banks and the President and Vice-President of the ECB. So **non-Euro zone Countries could also be represented in the Steering Committee**. The Steering Committee and the General Board will be assisted by a **Advisory Technical Committee** composed of high level officials structured in the same setting as the General Board

ESRB draft regulation available at: http://ec.europa.eu/internal_market/finances/docs/committees/supervision/20090923/com2009_499_en.pdf

NEW FINANCIAL SUPERVISORY ARCHITECTURE

EUROPEAN AUTHORITY TO ISSUE BINDING TECHNICAL STANDARDS ON IORPS

The European Commission has published on 23 September 2009 a legislative package to establish a **European System of Financial Supervisors** (ESFS). This European supervisory system will be composed of:

- three European Supervisory Authorities
    - European Banking Authority (EBA)
    - European Securities and Market Authority (ESMA)
    - European Insurance and Occupational Pension Authority (EIOPA)
- national financial supervisors

The ESFS will deal with the supervision of individual financial institutions.

EIOPA

The EIOPA will replace the CEIOPS, the current level 3 Committee for insurance and occupational pensions in the Lamfalussy procedure. EIOPA will assume all the tasks and competences of CEIOPS. In addition EIOPA will be entrusted more power and tasks. The most important are:

1. To prompt the Commission to adopt **technical standards** to ensure uniform implementation of the principle-based Lamfalussy legislation. The current procedure foreseen in the Lamfalussy strucutre, to adopt implementing measures at level 2, is said to remain. For the pension fund sector the relevant level 2 committee is the European Insurance and Occupational Pensions Committee—EIOPC. Until today, the interaction between Lamfalussy level 2 and level 3 and the power to propose implementing measures by EIOPA is vague and requires further legal clarification. It is expected that level 3 will deal with those measures which are technical and do not involve policy decisions. But, how to identify such issues? And, by whom?
2. To issue **non-binding guidelines and recommendations** on the application of Community legislation.
3. To **investigate implementation of Community legislation** and **issue recommendations** in case of non-compliance. EIOPA's recommendation is non-binding for a national authority, but if the national authory remains inactive, EIOPA can ask the European Commission to take a decision to enforce compliance at national levels. Meanwhile, EIOPA can adopt an individual decision addressed to one or more **financial institutions** to remedy the situation in a timely manner.
4. To adopt a decision requiring national authorties to take action in case of an **emergency situation**. It is the European Commission who defines such a situation.
5. To **settle disageements between national supervisory authorities**.

COMPOSTION

The main decision making body of EIOPA will be the **Board of Supervisors**, composed of:

with voting rights:

- A full-time independent Chair who has a mandate of 5 years and is confirmed by the European Parliament;

- Heads of the relevant national supervisory authorities;

without voting rights:

- a representative of the Commission ;
- A representative of the European Systemic Risk Board;
- a representative of the European Systemic Risk Board:
- a representative of the European Banking Authority;
- a representative of the European Securities and Market Authority;

In addition, there will be a **Management Board composed of:**

- Chairperson of EIOPA;
- 4 Members of the Board of Supervisors;
- A representative of the Commission;

The day-to-day activities of the Authority will be under the responsibility of an **Executive Director** who will have a 5 years mandate subject to one renewal.

EIOPA will also have a **Board of Appeal** to allow each natural or legal person, including national supervisory authorities to appeal to an EIOPA decision.

Industry involvement in EIOPA

The **Insurance, Reinsurance and Occupational Pension Funds Stakeholder Group** will act as a sounding board for EIOPA. It replaces the current Consultative Panel of the CEIOPS.

It will be composed of **30 Members representing:**

- Insurance and re-insurance firms
- Occupational pension funds
- **Employees** of insures, re-insurers and occupational pension funds;
- **Consumers and users** of financial services;

EIOPA and the IORP Directive / Pension Funds

The new supervisory environment is very challenging for pension funds and their EU legislative framework, the IORP Directive, which is not yet Lamfalussy compliant.

*EIOPA is clearly a move towards a **greater level of harmonisation** of the implementation of Community legislation. With the new Authorties, the **path of mutual recognition with a minimum level of harmonisation seems to come to an end in European financial services area.** Let it just be that path the legislators have chosen for the IORP Directive in 2003. With EIOPA in place the Commission might add a new argument to its list to persue a review of the IORP Directive: to fit the Directive into the new supervisory structure.*

Timetable

The Commission is eager to have the new Authority in place as from 1 January 2011. This timing is rather ambitious as Council and Parliament have both to agree on a final text. In any case, first there will be the process towards the establishment of the **European Systemic Risk Board** since this new body is the EU implementation of the G-20 commitments for better supervision of financial markets.

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