

Newsletter

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European Federation
for Retirement Provision

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16 November 2010
Frankfurt

FINAL AGREEMENT ON THE NEW SUPERVISORY AUTHORITY

On 22 September 2010, the European Parliament adopted the final text of the proposal for a **Regulation** establishing a European Authority for Insurance and Occupational Pensions (EIOPA). EIOPA shall replace the Committee of European Insurance and Occupational Pensions Supervisors and take over existing and ongoing tasks from CEIOPS.

In general, EIOPA shall:

- draft common regulatory and supervisory standards for cross-border activity, to be submitted to the Commission by 1 January 2014, for endorsement;
- ensure consistent application of legally binding Union acts;
- supervise, mediate and settle disagreements between competent national authorities;
- monitor and assess market developments;
- provide up-to-date and easily accessible information to the public.

In **emergency situations**, when a Council decision acknowledges that adverse developments may seriously jeopardise financial markets in the European Union, EIOPA may adopt compulsory decisions, requiring national authorities to take the necessary action to address such developments and to ensure application of the requirements laid down in EU legislation.

Two different stakeholder groups, for insurances and **occupational pension institutions**, have been established. The Occupational Retirement Provision Stakeholder Group shall meet at least four times a year and will deliver opinions. It shall be composed of 30 members, representing in balanced proportions IORPs (ten members), their beneficiaries as well as employees, SMEs and relevant professional associations. At least five of its members shall be independent academics. As for now, no stability fund for IORPs was established. The Proposal will be approved without further discussion at the next ECOFIN meeting, scheduled for 19 October 2010. EIOPA is expected to be operational from 1 January 2011.

DERIVATIVES MARKET

COMMISSION PROPOSES CLEARING RULES FOR OTC TRADING

On 15 September 2010, the European Commission has tabled a proposal for a **Regulation** (COM(2010)484/5) on derivatives.

- Trades in over-the-counter derivatives will have to be reported to **trade repositories**. Regulators in the EU will have access to these repositories, in order to monitor the market and detect potential risks. The newly established **European Securities and Markets Authority** (ESMA) will be responsible for the surveillance of trade repositories and for the supervision of derivatives' registration. Trade repositories will also have to publish aggregate positions by class of derivatives.
- **Standardised** derivatives (i.e. derivatives which respond to eligibility criteria) will have to be bought, sold and cleared through **central counterparties** (CCPs), which in practice act as mediators between buyers and sellers.
- In case a **contract is not eligible** to be traded through CCPs, different risk management techniques must be applied: electronic means to ensure timely confirmation of the OTC derivative contract, exchange of collateral, holding of capital.

The proposal also requires market participants to mitigate risks when operating on derivatives market, for example using electronic means to confirm the terms of OTC derivatives contract.

The Regulation is scheduled to apply from the second half of 2012.

SHORT SELLING

PROPOSAL TO INTRODUCE COMPULSORY NOTIFICATION

On 15 September 2010, the Commission has also adopted a proposal for a **Regulation** (COM(2010)482) on short-selling. The proposal requests all shareholders on trading venues to notify competent authorities their **net short position**, whenever the position reaches or falls below 0.2% of the value of the issued share capital of the company concerned. Short sell orders shall be "flagged" and published in a daily list by trading venues. Furthermore, short sell orders shall be disclosed to the public whenever the net short position falls below 0.5% of the value of the issued share capital. The obligation of short position notification includes sovereign bonds and credit default swaps trading.

To enter a short sale, an investor must have borrowed the shares or sovereign debt instruments, entered into an agreement to borrow them or concluded an arrangement with a third party to locate and reserve them in order to effect the settlement at the latest four days after the transaction.

In case of adverse events or serious threat to financial stability, national authorities shall be entitled to require **disclosure**, prevent investors from entering into transactions, limit the value of transactions; in the event of significant fall of trading price, national authorities shall restrict short selling until the end of the next trading day at latest. All measures shall be adopted in close cooperation with ESMA, which shall act directly if the intervention of national authorities is insufficient.

The Regulation is scheduled to apply from 1 July 2012.

ACCOUNTING STANDARDS

CRITICAL REACTION TO IASB EXPOSURE

DRAFT

EFRP has responded to the IASB exposure draft containing amendments to IAS 19 with regard to the accounting for defined benefit plans. The exposure draft was released on 29 April 2010 following the public consultation on the IASB discussion paper “Preliminary Views on Amendments to IAS 19” of March 2008. It proposes the **abolishment of the multiple options – deferred recognition, corridor – to recognize actuarial gains and losses**. All changes in the DB obligation – due to variations in interest rates and asset returns – should be recognized immediately. The withdrawal of the deferral options may, in countries where its use is prevalent, contribute to the ever growing pressure on DB plans to close by introducing capital market volatility in companies’ financial statements. The views of the different national associations within the EFRP are **divided on this immediate recognition**. The extent to which companies make use of the corridor option differs between countries and between industries. The IASB also intends to replace the expected return on assets by the discount rate in the finance cost component of the profit and loss statement. Currently, the finance costs of DB plans often make a positive contribution to companies’ profits as expected returns on assets exceed the discount rate on liabilities. The EFRP response expresses concerns that this **“net interest approach” could lead to a systematic misstatement of the actual investment performance** of the pension plan. EFRP is also worried about the proposed increases in disclosure requirements with regard to company

as well as multi-employer pension plans. **Excessive disclosures will increase administrative costs** of pension schemes and eventually result in lower retirement benefits. Finally, EFRP is disappointed by the cost-benefit analysis accompanying the exposure draft. The **impact assessment ignores the wider social and economic costs** arising from the behavioural changes that the proposals are likely to produce.

CORPORATE GOVERNANCE

EFRP ADVOCATES A PRINCIPLE-BASED APPROACH

This month EFRP has responded to the Green Paper on Corporate Governance in Financial Institutions and Remuneration Policies. It was issued by the European Commission to examine corporate governance rules and practice within financial institutions in the light of the financial crisis. The Green Paper proposes measures to improve corporate governance of banks in various areas:

- composition, role and functioning of boards of directors
- independence and authority of the risk management function
- role of external auditors
- role of supervisory authorities in internal governance
- role of shareholders in financial institutions
- civil and/or criminal accountability of board members
- remuneration of directors of listed financial companies
- conflicts of interest in the financial services sector

The EFRP response focuses on the role of **pension funds as shareholders** of financial institutions. It emphasizes that pension funds take active ownership policies very seriously by incorporating ESG issues in the investment decision-making process, having active voting policies in place and engaging companies with regard to corporate governance.

EFRP supports the Commission's aim to encourage shareholder engagement, but opposes any form of compulsion. Instead, **adherence to responsible investment principles on a 'comply or explain' basis** may be a good way to contain free-rider behaviour. In the UK, the Financial Reporting Council (FRC) has recently issued 'The UK Stewardship Code' and other countries may follow suit. EFRP proposes in its response that the Commission should consider developing an '**EU Stewardship Code**' containing a limited number of **high-level principles on engagement, voting and disclosure**. This would prevent a proliferation of codes around Europe and ease the administrative burden on institutional investors.

The European Commission received some 200 responses to the Green Paper, which will be published – together with a summary – mid October. Legislative proposals are expected to be put forward in the first half of 2011.

The issue of shareholder engagement will probably be pursued further in a separate review of corporate governance within listed companies – and perhaps even unlisted companies. This Green Paper is set to be released in the beginning of 2011 as well.

EFRP response to the Green Paper on Corporate Governance is available at: <http://www.efrp.eu/Publications/EFRPLibrary.aspx>

DIARY MARK

EUROPEAN PENSION FUNDS CONGRESS

The EFRP will host its 5th European Pension Funds Congress during the EURO FINANCE WEEK in Frankfurt on **16 November 2010**.

Topics to be discussed will be:

- EC Green Paper on the Future of Pensions in the EU
- DC Pensions: Range of Investments and Options for Scheme Members
- How Pensions Institutions Contribute to Financial Stability and Economic Growth

Participants are invited to register at : http://www.malekigroup.com/en/Event/Ticketreservation.html?event_id=568

Programme available at: <http://www.efrp.eu/LinkClick.aspx?fileticket=aQTt3wFIw9c%3d&tabid=1402>



**JOIN THE DEBATE ON THE
FUTURE OF
PENSIONS IN THE EU:
EUPENSIONDEBATE.EU**

To cover all the aspects of the Commission's Green Paper on pensions, EFRP has launched **www.eupensiondebate.eu**

EUpensiondebate.eu is attracting a growing number of high-level contributions.

EUpensiondebate.eu is also present on social network sites such as Facebook and Twitter.

Please register at : <http://www.eupensiondebate.eu/Register.aspx>