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Annual Report

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Contents 2

Introductory words

There can be no doubt that 2005 was an important year for workplace pension provision. We are proud that the European Federation for Retirement Provision ('EFRP') was on many occasions at the forefront of developments. However there is still more to be done in the forthcoming years. EFRP looks forward to meeting the challenges that lie ahead.

The IORP Directive[1] is fundamentally changing the face of European supplementary workplace pension provision. It must now be interpreted consistently. More importantly, it must be given the opportunity to operate and to deliver its full potential. At long last pan-European pension funds are closer to becoming a reality. The EFRP has long-advocated the advantages of such pan-European pension vehicles. Soon we hope millions of European citizens will benefit from an internal market for workplace pension provision.

The new European regulatory and supervisory committees took evolutionary steps forward. EIOPC finally came into existence and CEIOPS became more active.[2] Supervisory and regulatory co-operation across Member States is becoming crucial to creating an effective internal market and the EFRP is adjusting its role accordingly.

In times of demographic change the EFRP urges European policy makers to carefully balance their initiatives so that policy failures can be mitigated if not eliminated. It is essential that at all levels the fundamental concept behind workplace pension provision is clearly understood so that the correct policy choices can be made.

With these issues in mind, the EFRP recommends that consideration be given to an EU instrument establishing a common pension pillar terminology relying on a common analytic framework and which is applicable in all 25 Member States. This should be based on key characteristics and not on the scopes of EU laws that emerged on a piecemeal basis over a long period of time and which were never intended to constitute a single system that comprehensively reflects the varied pension pillar systems in the EU. The Open Method of Coordination would benefit greatly from an agreed three pillar pension structure with consistent terminology.

By promoting 'best practice' it is possible to strengthen the EU objective of adequate and sustainable pensions. Indeed, to avoid old-age poverty, increasing the coverage and improving the affordability of occupational pension provision is crucial. This can however only be

1 IORP = institution for occupational retirement provision - see Section 1 below.

2 EIOPC = European Insurance and Occupational Pensions Committee; CEIOPS = Committee of European Insurance and Occupational Pension Supervisors – see Section 1.3 below.

achieved if policy makers provide a cost efficient framework for it and do understand which systems are by themselves more cost efficient than others.

In 2006, the EFRP will focus on:

- the basic legal framework for IORPs – the IORP Directive and the national rules implementing it will be under the spotlight and will finally begin to be subjected to serious legal and operational testing;
- the new EU regulatory and supervisory framework for IORPs – this is now beginning to crystallise;
- a host of new measures that are in the pipeline – these range from Commission-led reviews of current EU financial services legislation, the Commission's corporate governance initiatives, the complaints on discriminatory tax treatment of cross border transfers of pension capital, the Solvency II project through to the proposed portability Directive which is already before the European institutions for amendment and adoption.

We must continue to be a forward-thinking organisation, by showing that EFRP can deliver solutions to difficult questions.

Last but not least we are proud to announce that EFRP will be celebrating its 25th anniversary in 2006. The EFRP has become the leading voice on workplace pension provision in Europe. Our organisation would not be possible without the hard work of our Members, Supporter's Circle, and the EFRP Secretariat, so we would like to say thank you to you all.

Jaap MAASSEN
Chairman

Chris VERHAEGEN
Secretary-General

Commissioner Charlie McCREEVY welcomed the EFRP on 14 September 2005. From the left Angel MARTINEZ-ALDAMA, EFRP first Vice-Chairman, and Nora FINN, Chief Executive of the Irish Association of Pension Funds (IAPF).

1. Regulatory and supervisory framework for IORPs

Despite an absence of high profile activity, 2005 saw significant developments in the regulatory and supervisory framework for IORPs:

- implementation of the **IORP Directive** moved forward - albeit fitfully and too slowly, and
- the contours of the new **committee structure** responsible for ensuring that the IORP Directive becomes fully operational gained in clarity.

The EFRP has been active in regard to both processes.

1.1 Transposition of the IORP Directive

The IORP Directive[3] should liberalise occupational pension provision across Europe and enable establishment of European Institutions for Occupational Retirement Provision (EIORPs). If properly implemented, it will mark the start of a new era for occupational pension providers.

On 23 September 2005, its two-year implementation period ended. By then each Member State should have had transposed the IORP Directive into national law and notified the EU Commission. Regrettably by that date only four full notifications were lodged. By the end of 2005 this number had risen to 12.

3 Directive 2003/41/EC on the activities and supervision of Institutions for Occupational Retirement Provision

Implementation of the IORP Directive will therefore continue into 2006. Transposition has raised many novel questions and is no mechanical process. Debates about basic aspects of the IORP Directive will continue into 2006 and beyond. This Directive is far from being a closed issue. Patience and determination are called for.

Throughout the implementation period, the EFRP has proposed solutions to technical questions and challenged misconceptions.

During 2005, the EFRP

- engaged in continuous dialogue with the **European Commission**, culminating in a meeting with Commissioner Charlie McCreevy on **14 September 2005**, at which the EFRP highlighted issues of late and possible faulty implementation;
- provided input into the **Member State Transposition Groups** organised by the European Commission to solve implementation difficulties;
- submitted its views to the **Committee of European Insurance and Occupational Pension Supervisors** (CEIOPS) on the role of social and labour law and on the authorisation and notification procedures under the Directive. Focussed on the two-step consultation on the draft "Budapest Protocol" (common guidelines for supervisors on the single EU licence and policing cross-border activity by IORPs), it included a presentation on 14 July 2005 to CEIOPS' Working Group on Occupational Pensions.
- gave its views to **Member States** where this has been requested and
- explained its position to other **market players** and interested parties

The EFRP highlighted several issues where there is risk of misinterpretation while transposing the IORP Directive into national law. They included:

- Correct **identification of IORPs** and any managing entities - crucial for establishing legal liability, ensuring coherence with rules for other financial services providers and the integrity of the three pillar pension system.
- A risk that the **prudent person rule** for investment is compromised by the Member State option to introduce extra quantitative or more stringent investment rules - the EU Commission has now reminded Member States that this option may only be exercised if *"prudentially justified"*.
- Inflated national **social and labour law** means inflated cross-border barriers. The EFRP has challenged suggestions that social and labour law should allow a host State – in addition to an IORP's home State - to intervene in the financial services operations of an IORP.
- Ensuring that **cross-border supervision** is on a **one-stop-shop** basis - a single contact point is user-friendly, reduces red tape and promotes effective cross-border supervisory co-operation.
- No multiple **authorisations** – authorisation is one-off for each IORP and must not be mixed up with **notification** – a procedure is triggered by each new potential cross-border sponsor.
- Demands for **accounts and reports** for each **scheme** operated by an IORP in addition to those for the IORP itself – the EU Commission now envisages extra reports only when 'economic reality' demands it.
- **Full funding** is defined as **sufficient and appropriate assets** - a concept that has qualitative and dynamic aspects and cannot be reduced to a fixed figure.
- **Full transposition** is not just about dealing with domestic IORPs and their products - each Member State prudential framework must allow export-only IORPs that can provide those occupational retirement benefits appropriate to any other Member State under their social and labour law.

1.2 The new committee structure

The IORP Directive is principle-based, leaving much to the discretion of individual Member States. To reduce risks of retrogressive implementation and cross-border inconsistency, the IORP Directive obliges Member States to engage in permanent dialogue with each other and the EU Commission so as to ensure **uniform application** and **effective cross-border membership**. It foresees a committee to take this forward. This provision goes beyond equivalent measures in other financial services Directives.

Almost coterminous with this is the emergent '**Lamfalussy system**' for financial services. This overlaps with the EU Commission's new, pro-active approach to promoting **better implementation of directives**.[4]

Together these elements have created a committee structure that is an essential adjunct to the IORP Directive.

- The **Committee of European Insurance and Occupational Pension Supervisors** ('CEIOPS') is tasked with ensuring coherent cross-border implementation by ***supervisors***. It has not only been preparing and consulting on the "**Budapest Protocol**" on cross-border supervisory issues it has also begun work on a **common understanding** of the IORP Directive. This identified a number of issues which it will take forward under its work programmes for 2006 and the medium term.
- The **European Insurance and Occupational Pensions Committee** (EIOPC) – the ***regulators***' counterpart to CEIOPS – finally came into existence on 13 April 2005. Its role to date has been confined to making high level policy decisions – leaving coordination of regulatory nuts and bolts to the **Transposition Groups** organised by the EU Commission.

The EFRP believes that this committee system must develop in an **accountable** and **transparent** way - **promoting** rather than diluting the **effectiveness** of the IORP Directive. In 2005, the EFRP conveyed this message to both CEIOPS and the EU Commission. It also sought to give CEIOPS' **Market Participants Consultative Panel**, on which the EFRP has a presence,[5] more teeth.

4 See its Communication "Better Monitoring of the Application of Community Law", COM(2002)725 final, Brussels, 11.12.2002.

5 See Section 8.2

1.3 Looking ahead

1.3.1 Implementing the IORP Directive

During 2006, the EU Commission will turn its attention to those Member States that have still failed to notify their laws transposing the IORP Directive.[6] It will also begin a qualitative assessment of the national rules said to transpose the IORP Directive and that have been notified.

The EFRP will continue to track Member State transposition. It is particularly interested in identifying cases of bad transposition and over-regulation (‘gold plating’).

Following the success of our **legal commentary on the IORP Directive**, published in October 2004, we will publish a revised version in 2006.

1.3.2 Securing an effective committee structure for IORPs

The EFRP will continue to:

- ensure that both EIOPC and CEIOPS
  - increase in transparency and readiness to consult market participants;
  - accept that IORPs are different from other types of financial services providers and the regulatory and supervisory consequences of this;
- track progress of the Lamfalussy system, intervening when necessary.

Success here will have effects that go beyond the IORP Directive, spilling over, for example, into the areas of solvency and corporate governance.

6 EU Commissioner Charlie McCreevy on 5 December 2005 issued letters as part of the first phase of infringement proceedings.

Commissioner László KOVÁCS met EFRP Chairman, Jaap MAASSEN (left), to discuss the removal of tax barriers for IORPs on 21 April 2005.

2. Removing Tax Barriers

Taxation is still a major obstacle to the emergence of pan-European business. This is no different in occupational pension provision. But step by step the EU Commission and the European Court of Justice have been patiently dismantling discriminatory tax barriers across the EU. The EFRP is delighted at this and hopes that it will continue. We fully support both EU institutions in their determination.

On **21 April 2005**, the EFRP met Mr. László KOVÁCS, EU Commissioner responsible for Taxation and Custom Unions. It presented him with two preliminary reports on discriminatory taxation affecting occupational pension funds.

2.1 Dividend and interest paid to foreign pension funds

On 2 December 2005, EFRP and the EU Direct Tax Group of PricewaterhouseCoopers lodged 26 complaints with the EU Commission against 18 Member States for discriminatory tax treatment of foreign pension funds. We requested the EU Commission to start infringement proceedings against those Member States to put an end to those discriminatory practices.

It was the first time in the history of the EU direct taxation directorate that it received so many complaints on the same subject on a single day.

The table below indicates Member States targeted for infringement proceedings and on what basis.

	Dividend taxation	Interest taxation
Austria	X	X
Czech Republic	X	X
Denmark	X	
Estonia	X	
France	X	X
Finland	X	
Germany	X	(X)
Hungary	X	
Italy	X	
Latvia	X	
Lithuania	X	X
Netherlands	X	
Poland	X	X
Portugal	X	X
Slovenia	X	X
Spain	X	
Sweden	X	
United Kingdom		X

Discriminatory taxation penalises cross-border activity - Example

A Spanish pension fund ("Local PF") invested in shares in the Spanish Company "SpaCo". In 2004, SpaCo pays out a dividend of € 100,000. On the basis of Spanish law SpaCo withholds 15% x € 100,000 = € 15,000 dividend withholding tax and pays out a net dividend of € 85,000 to Local PF.

- Under Spanish law, however, Local PF is exempt from income tax and corporate tax. It can claim a refund from Spain for the full amount of the dividend withholding tax levied (€ 15,000), leaving Local PF with the gross dividend - **a net income of € 100,000.**
- But a comparable Dutch pension fund ("Foreign PF"), located in the Netherlands and like the Spanish fund exempt from income tax and corporate tax, which has also invested in the same amount of shares in SpaCo, does not get a refund from Spain. This leaves Foreign PF with **a net income of € 85,000.**

2.2 Cross-border transfer of pension capital

The EFRP is also preparing complaints on the discriminatory treatment of cross-border transfers of pension capital.

In many Member States transferability of accrued pension rights is still in its infancy. In the light of the proposed portability Directive, it is important to remove the discriminatory tax barriers of cross border transferability. Otherwise - even with a portability Directive in place - individuals will be hindered to transfer pension capital if this triggers fiscal penalisation.

2.3 Looking ahead

The EFRP will continue to work for the elimination of discriminatory tax barriers facing workplace pensions. Only then can there be a true internal market for workplace pension provision.

We will await the outcome of our complaints lodged with the EU Commission to see whether or not it will launch infringement proceedings against Member States.

We will also conclude on our findings on the cross-border transfers of pension capital.

3. Social policy legislative developments

Social policy legislative initiatives followed by the EFRP in 2005 were the proposed Directive on portability of occupational pensions and the recasting of the Directive on equality between men and women in the workplace.

3.1 Draft Directive on portability of supplementary pension rights

The proposal for a Directive to improve the portability of supplementary pensions was adopted by the Commission on 20 October 2005.[7] The proposal is intended to introduce:

- a common EU-wide harmonised framework for the **acquisition** of pension rights;
- a worker's right to **transfer** the actuarial value of his/her pensions entitlements out of the old employer's scheme into a new employer's scheme;
- **fair adjustment** of dormant rights for those outgoing workers not wanting to transfer out;
- portability **information** rights;

The remainder of 2005 saw intense behind the scenes activity by Council at Working Party level. The European Parliament did not start work.

7 COM (2005) 507 final

The EFRP responded with qualified support to the proposal because it has long championed principles of cross-border mobility. However, it expressed reservations about the practical mechanisms proposed and especially, their unclear costs. The EFRP also submitted to the EU Commission a study on the cost impact in Germany and an estimate for the Netherlands which demonstrated that the costs will be more than significant if the proposal as tabled by the EU Commission were adopted.

Key points on the EFRP position on Portability

- There is a **potential conflict of objectives** between seeking to **improve access** to workplace pension provision and aiming to **improve the quality** of such provision. This proposal risks reinforcing the trend away from defined benefit towards defined contribution systems.
- To **increase coverage of workplace pension schemes** requires simplification and cost effectiveness - the current proposal is not the most appropriate method of achieving this objective.
- The **scope of the proposal** seems arbitrary – and further work is required to prevent Member States from using Regulation 1408/71 as an opt-out.
- The EU Commission's '**Better Regulation**' objective needs to be followed here. Its impact assessment is unconvincing.
- A large degree of **subsidiarity** is required so as not to disrupt otherwise well-functioning national pension systems.
- Minimum of 10-year **transposition periods** are needed to smooth transition in Member States where portability is still incomplete and also to ensure continuation and long term sustainability of defined benefit schemes.
- Basic elements of the draft invite misunderstanding, e.g.:
  - the **fair adjustment** and **preservation** concepts suggest indexation – although the EU Commission proposal and supporting documentation avoid using this term.
  - the treatment of **transfer** is ambiguous - at one point it is about capital sums yet at another it is about rights.

  Unless these are clarified in a simple way - not involving harmonisation of Member State law in this area - the risk is that they will only be given meaning after a directive has been adopted either by EU Commission guidelines or, after litigation, by the European Court of Justice.

3.2 Recast Directive on equality between men and women in the workplace

The EU Commission's initiative of 2004 to recast the Directive on workplace equality between men and women[8] was sensitive because of the risk of possible inclusion of a prohibition of sex-based actuarial factors on the lines of the non-workplace Directive adopted in 2004.[9] The European Parliament concluded its first reading on 6 July 2005 and the EU Commission submitted a modified proposal on 25 August 2005. Final adoption is envisaged for 2006.

The EFRP was very active during the passage of the non-workplace Directive. It had then expressed worries about a possible spill-over between what amount to parallel laws on the same subject-matter but which appear to rely on different concepts of equality.

The EFRP monitored the progress of this proposal. It indicated its views to the EU Commission and the European Parliament to proposals to eliminate any kind of gender-based distinction.

3.3 Looking ahead

The timetable for the portability measure has undergone some slippage. However, 2006 should signal the end of Parliamentary inactivity on this file. The EFRP will use this delay to persuade EU Commission, European Parliament and Member States to take its concerns into account.

Once the recast Directive is finally adopted, the EFRP will monitor the parallel operation of both the workplace and non-workplace equality Directives to see if this gives rise for concern.

8 COM(2004)279 of 21.04.2004.

9 See Article 5 on Actuarial Factors in Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

4. Making sense of EU pensions diversity

Individual Member States have control over the design and structure of their national pension systems. So they not only look different, but they also operate very differently from Member State to Member State. On 1 May 2004, the already diverse European pensions landscape increased in complexity with the accession of ten new Member States (EU-10 NMS). But this diverse collection of systems confronts the same problem - demographic ageing. How can national diversity be respected yet also allow for coordination to solve a shared problem?

The Open Method of Coordination (OMC) and the associated national strategy reports for pensions are first attempts by the EU to streamline pension policy and to promote good practice and mutual learning across the Member States.

The EFRP welcomes this approach but is concerned at the continuing lack of a consistent EU-25 terminology on pension structures. It precludes the national strategy reports from serving as an adequate knowledge-base for policy formulation.

4.1 An EU-25 wide descriptive pension pillar terminology

The variety of multi-pension pillar models now used across the EU-25 makes attempts to compare national pension systems a perilous exercise.

Assessing Member State efforts to develop modernised and sustainable pension systems requires a common analytic framework. Only then will meaningful discussion by European pension policy makers be possible. A stock of common concepts will also enable the OMC to begin meaningful benchmarking and the mutual learning process that is needed for pensions.

The EU Commission Pensions Forum opened a debate on an EU-25 pension pillar terminology in April 2005. The EFRP took up the issue and gave a presentation at the Pension Forum of **8 November 2005** on how the many national variants of the three pillar pension model can be subsumed under a single EU-25 model.

EU-25 PENSION PILLAR TERMINOLOGY – AN EFRP MODEL

The FIRST PILLAR should pick out state pension schemes financed on a PAYG basis through **social security contributions and/or taxation**. The demographic reserve funds, set up by Member States to partly relieve the budgetary consequences of ageing on the PAYG pension system, should be considered as belonging to the first pillar as these funds are dedicated to pay-out first pillar pension benefits. The State pension should aim to allow pensioners to cover basic living costs upon retirement.

The SECOND PILLAR should contain all **pension** schemes **linked to employment** or professional activity, operated by private vehicles and financed through employer and/or employee contributions or through contributions paid by self-employed and professionals. The second pillar should aim to allow pensioners to maintain their quality of life upon retirement.

The THIRD PILLAR pension would include **individual pension schemes** i.e. when an individual independently purchases specific retirement savings products to top up first and/or second pillar provision and which have no workplace or professional connection.

Note: neither the mandatory / voluntary character of a pension scheme nor whether it is funded or unfunded should be decisive factors in distinguishing between pension pillars. Consistent labelling and recognising the diversity that exists (in second pillar schemes) is in our view the key to describing the EU-25 pension landscape.

4.2 Better understanding of pension benefit design

The EFRP has tendered a research proposal to the EU Commission for a project to illustrate and explain the characteristics in terms of risk-types and costs for different forms of private pension provision. Developing a strategy for dealing with demographic ageing means that it is important that policy makers understand the long term macro- and microeconomic dynamics of private pensions and how they fit into the EU social model.

We believe that all European citizens should have access to affordable, cost efficient occupational pension provision. A savings account falls short of serving this particular need. Occupational pensions are about risk-sharing with employers – whether or not such an agreement is based on individual contracts or embedded in labour agreements.

On 17 October 2005, Prof. Dr. Guus BOENDER, Professor at the University of Amsterdam, and a director of ORTEC, delivered a presentation to the EU Commission on behalf of the EFRP about the added value in workplace pensions based on risk sharing between different contributors to the scheme.

4.3 Looking ahead

The EFRP will continue to work for a better understanding of the different national pension systems. We also recommend that the EU Commission begin work developing a common terminology - practical and pragmatic in nature - which can be used to describe the EU-25 three pillar pension system so as to allow meaningful comparisons.

We will promote research on the mechanisms underpinning workplace pension provision which explain why they should be regarded as the primary technique for providing an affordable and sustainable supplement to state pensions.

5. EFRP Working Groups

The EFRP Working Groups bring together national experts to consider technical issues faced by workplace pension providers. They create pools of expertise in new areas of increasing relevance to IORPs.

5.1 Accounting

Chair: **Mr. Peter LINDBLAD**, second vice-Chairman of EFRP

Accounting rules have been identified as a strong driver for the decline in defined benefit pension schemes in which a corporate sponsor takes on a degree of risk in providing a pension benefit.

The Working Group has discussed issues such as:

- the most appropriate techniques for calculating pension liabilities;
- the correct discount rate to use to value pension liabilities;
- the smoothing of assets and/or liability variations.

It will monitor the announced review of IAS 19 and also take a closer look at the consequences of IAS 26 for pension funds.

Members:

Mr. Wil BECKERS – NL

Mr. Joachim BODE - DE

Mr. Hugo CLEMEUR – BE

Mr. Gerard HEERES – NL

Mr. Hans NIJHUIS – NL

Mr. Joos NIJTMANS – NL

Mr. Ray MARTIN – UK

Ms. Rhoslyn ROBERTS – UK

Ms. Cornelia SCHMID – DE

Mr. Henk SCHUIJT – NL

Mr. Klaus STIEFERMANN – DE

Ms. Teresa TURNER – UK

5.2 Corporate governance and pension fund governance

Chair: **Mr. Angel MARTINEZ-ALDAMA**, first vice-Chairman EFRP

This Working Group has a dual focus: corporate governance and pension fund governance.

5.2.1 Corporate Governance

As investors, pension funds favour clear principles of corporate governance. Through their portfolio management pension funds can contribute to a long-term efficient allocation of resources in the economy.

The Working Group identified two different levels in corporate governance in Europe and recommends that policy makers take this into account when modernising company law in Europe.

Having analysed several corporate governance codes - both national and international - the Working Group concluded that it was unnecessary to draft yet another. The Working Group recommended relying on both the OECD code on corporate governance and the ICGN[10] code. Whereas the OECD code lays down several principles of corporate governance, the ICGN Code focuses on some practical issues from the investors view such as ownership, voting rights and corporate boards.

Both the EFRP Board of Directors and the EFRP General Assembly of the Members of October 2005 accepted this view.

10 International Corporate Governance Network

5.2.2 Pension fund governance

If pension funds put requirements on the companies in which they invest, pension funds themselves will also be expected to abide by principles of good governance.

The Working Group has started to compare the existing codes and guidelines on pension fund governance. This should lead them to formulate an EU-level view on pension fund governance. The OECD guidelines on pension fund governance seem to be a valid starting point and we will now look at any practical problems arising from their application.

Members:

Mr. Christian BÖHM - AT

Mr. Peter BORGDORFF – NL

Mr. Robin ELLISON – UK

Ms. Nora FINN – IE

Mr. Angel MARTINEZ-ALDAMA – ES

Mr. Geert RAAIJMAKERS – NL

Mr. Klaus STIEFERMANN – DE

5.3 Funding and solvency

Chair: **Mr. Wil BECKERS**, Board Member EFRP

It is important to promote the provision of secure workplace pensions in which consumers have confidence over the long term. But their affordability must also be borne in mind. Supervisory complexity and additional financial security requirements entail cost increases that will be borne by sponsors and/or members.

Solvency II entails a complete overhaul of fundamental aspects of EU insurance regulation. [11] The EU Commission and EIOPC will shortly decide to what extent a similar exercise can be carried out for IORPs including whether Solvency II can be simply extended to them.

The Working Group is assessing the implications for IORPs and the possible impact on employers, employees and the economy as a whole.

11 Solvency II is much more than just harmonizing capital requirements; this comprehensive review of the supervisory approach for insurance undertakings, involves a shift towards a risk-based supervisory framework.

At an early stage in its analysis, the Working Group became convinced that regulation in occupational pension systems has reached a point where further complexity is becoming counterproductive, reducing the attractiveness of occupational pensions. This must be avoided at a time when Europe needs to reform its pension systems to face the consequences of an ageing population.

Members:

Mr. Jon ALDECOA – ES

Mr. Peter HADASCH – DE

Mr. Olaf JOHN – DE

Mr. Peter LINDBLAD – SE

Mr. Ephraïm MARQUER – FR

Mr. Fabrizio MONTELATICI – IT

Mr. Alberto ROMERO GAGO – ES

Mr. Olaf SLEIJPEN – NL

Mr. Hans VAN DER VELDE – NL

Mr. Maurice WHYMS - IE

Mr. Jon WIGLEY - UK

Key points on the EFRP position on Solvency II

- The **regulatory frameworks** for IORPs and insurance companies are different, reflecting objective differences and so should not follow the same path. In any event, policy makers must observe how the untested IORP Directive performs operationally at Member State level before reviewing its adequacy and making concrete proposals for change.
- Many IORPs have in-built **self-corrective mechanisms** to ensure long-term solvency and these need taking into account. These include:
  1. **Flexible policy parameters** enabling IORPs to adjust pension arrangements in response to unforeseen developments.
  2. **Integration of social partners into the governance structure** ensuring that activity and any adjustments are in the collective interest of members and sponsors.
  3. A **long term investment horizon** allowing IORPs to manage market fluctuations and to better diversify investment portfolios.
- IORP **pension schemes** interface with Member State **social and labour policy objectives** thus raising sensitive questions about subsidiarity generally absent from the EU regulatory framework for insurance.

6. EFRP Responses to EU Commission Consultations

In 2005, the European Commission organised a number of important policy consultations. Our responses are available on the EFRP website www.efrp.org.

6.1 Financial Services Policy (2005-2010)[12]

The EFRP is a long-standing supporter of an internal market for financial services. The Financial Services Action Plan ('FSAP') has largely secured 'Europeanised' regulatory and supervisory frameworks for them. This consultation sought to identify what should come next.

For the EFRP it is important that the financial services regulatory and supervisory framework becomes truly operational and delivers tangible results.

12 EU Commission Green Paper on Financial Services Policy (2005-2010) - COM(2005)177.

Key points of EFRP's response:

- A legislative pause at EU level is desirable but should not otherwise mean inactivity.
- Only effective transposition of EU legislation into national law will deliver the benefits promised by the FSAP
- The IORP Directive is an important part of the FSAP. The EU Commission must now ensure that it has a real chance to operate and deliver.
- Cross-border supervisory cooperation should aim at facilitating pan-European business.
- The accountability and transparency of Lamfalussy committees, such as EIOPC and CEIOPS, must be improved.

6.2 Demographic Change[13]

Europe is ageing. Not only will European society drastically change but ageing will reduce our economic potential unless adequate action is taken.

The EFRP welcomes the EU Commission's proposal to adopt an integrated European approach to tackle the consequence of ageing. But, somewhat surprisingly, the role of pensions policy was unclear in this consultation. For most of Europe's elderly citizens, pensions will be their only source of income on retirement.

13 EU Commission Green Paper "Confronting demographic change: a new solidarity between the generations" – COM(2005)94, 16.03.2005.

Key points in EFRP's response:

- Private pension provision must expand to avoid old age poverty.
- The European regulatory framework should promote cost-efficient and affordable supplementary pensions for all Europeans.
- Increased coverage of workplace pension provision is necessary to secure adequate income level upon retirement.
- Added value of pension schemes with an element of risk-sharing between stakeholders at the level of the contributions, the investments and the benefits should be better understood and deserve being promoted at European level.
- It is important to maintain statutory pension systems (first pillar) and to reform them as necessary according to demographic change.
- Increasing the effective retirement age is the most powerful parametric reform to make statutory pensions sustainable.

6.3 Investment Funds[14]

The EU Commission consulted on the effectiveness of the UCITS Directive(s). This consultation went beyond a mere review of the UCITS Directives. It considered all aspects of the asset management industry. It also opened up the question of whether all EU rules dealing with investment activity would benefit from harmonisation and whether the IORP Directive had an exclusionary effect on asset managers in the field of occupational pension provision.

14 EU Commission Green Paper on the enhancement of the EU framework for investment funds – COM(2005)314, 12.07.2005.

KEY POINTS IN EFRP'S RESPONSE:

- Regulatory difference is not necessarily market distortive.
- Workplace pensions are more than just long term savings products.
- The IORP Directive should be given time to operate and to deliver.
- The IORP Directive does not exclude other financial services providers from providing occupational pensions or operating under the IORP Directive as a managing entity.
- Focus on correct transposition and enforcement of IORP Directive.
- The added value of pension schemes which allow risk sharing among members of the same company/industry or any other constituted group should be fully understood by policy makers.
- Private equity and hedge funds are useful options for portfolio diversification of pension funds.

6.4 Improving Shareholder Rights

The EU Commission has proposed a Directive to improve the rights of shareholders'[15]. Two public consultations, one in September 2004, and the other in May 2005 took place. The EFRP responded to both.

The proposal for a Directive aims to facilitate the exercise of shareholders' rights cross-border by removing the main obstacles that currently exist such as share blocking, problems with access to information that is relevant to General Meetings, and the obstacles to cross-border and proxy voting.

This proposal has four main objectives:

- to ensure that all general meetings are convened sufficiently in advance and provide documentation in time;
- to abolish all forms of share blocking;
- to remove all legal obstacles to electronic participation in general meetings;
- to offer non-resident shareholders a simple way to vote without physically attending the meeting.

As institutional investors, it is important that IORPs take a view about what is happening in this area.

15 Proposal for a directive "on the exercise of voting right by shareholders of companies having their registered office in a Member State and whose shares are admitted to trading on a regulated market and amending Directive 2004/109/EC" - COM (2005)685, 05.01.2006.

Key points in EFRP's response:

- **Scope** – rules on cross-border voting not compulsory for non-listed companies i.e. they can opt-out via unanimous agreement. Undertakings for the Collective Investment of Transferable Securities ('UCITS') companies should not be exempt.
- **Identification of the person to control voting rights** – definition of the ultimate 'beneficial owner' - as the last natural or legal person which also include unit funds, those outside the EU and holders of depository rights.
- **A workable proxy voting system** – safeguards required and securities intermediaries should certify to the issuing company who is the ultimate investor and for how many shares. Electronic voting should be made available.
- **Securities lending** - a record date of 30 days before an Annual General Meeting ('AGM') would allow institutional investors to vote the shares which they still own in an economic sense as well as suppressing the practice of lending shares to influence the outcome of voting at AGMs.
- **Disclosure of General Meeting material** – information should be available on websites at least three weeks before the final date that votes can be cast in absentia. Website information should follow a standardised EU format.
- **Minimum standards required for tabling resolutions and placing items on agenda** – a requirement to hold one percent of the total share capital or a value of 50 million Euros.
- **Share blocking** – should be abolished, it is a barrier. Investors may lose valuable returns if they vote all their shares.

6.5 Looking Ahead

In 2006, the EU Commission should, among others, publish two further Green Papers.

The first will be about the evolution of labour law and the second will review the consumer protection regulatory framework.

The EU Commission will also conduct an evaluation of the Financial Service Action Plan (‘FSAP’).

We feel that it is still too early to carry out any effective evaluation of the IORP Directive on the basis that it is still being implemented and will need at least three to four years to bed down before any defects can be identified and practical solutions developed. Throughout 2006, EFRP will ensure that all relevant consultations for IORPs receive its attention.

7. Second pillar pension statistics

The format of the EFRP statistical survey has been updated in 2005 to better reflect the diversity of the EU-25 second pillar pension landscape. To facilitate interpretation and analysis we distinguish between mandatory and voluntary workplace pension schemes.

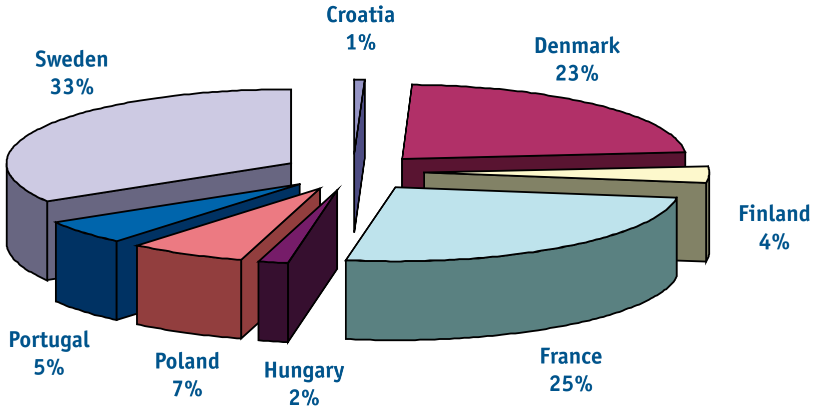
At the end of 2004, the EFRP represented through its Member Associations more than EURO **3,3 trillion** managed for future second pillar pension payments: 78 % of the assets were managed by pension funds, 8% were held in book reserve systems and 14 % was managed by life-insurance companies. The bulk of theses assets (95%) were held in voluntary workplace pension schemes.

7.1 Workplace pension provision – mandatory schemes

At the end of 2004, EURO **210 billion** was managed by **pension funds or pension fund management companies**[16].

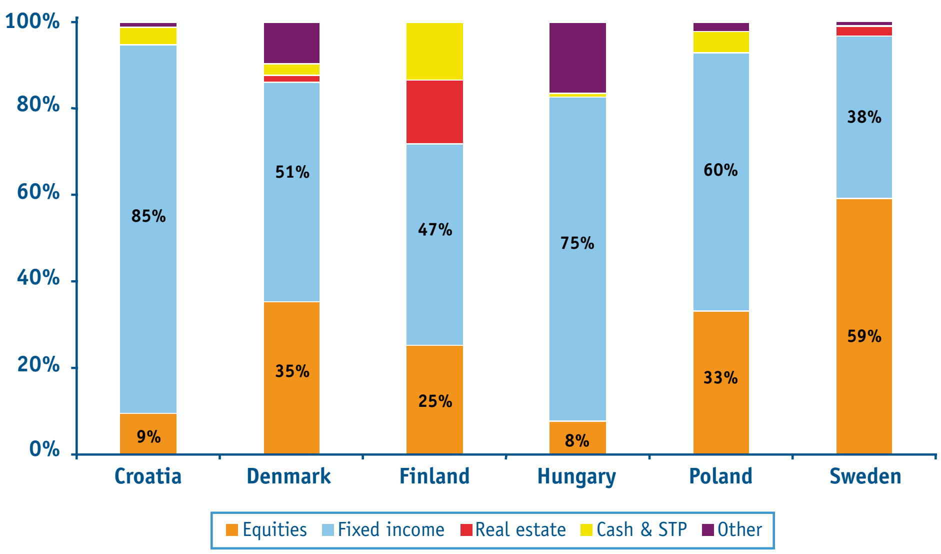
16 In Finland 91% and in Sweden 16% of the assets in the mandatory systems are held by life insurance companies. These assets have not been taken into account in the analysis.

The geographical breakdown of these assets is illustrated as follows:



As to **asset allocation**, there is one clear trend in these schemes: **fixed income** (government and corporate bonds) is the dominant asset class. These pension funds fall outside the scope of the IORP Directive and thus do not benefit from the prudent person investment standard. We welcome that the EU Commission has started to analyse whether the investment restrictions of these pension institutions are not in breach of the EU Treaty.

The **asset allocation** for some Member countries is illustrated as follows:



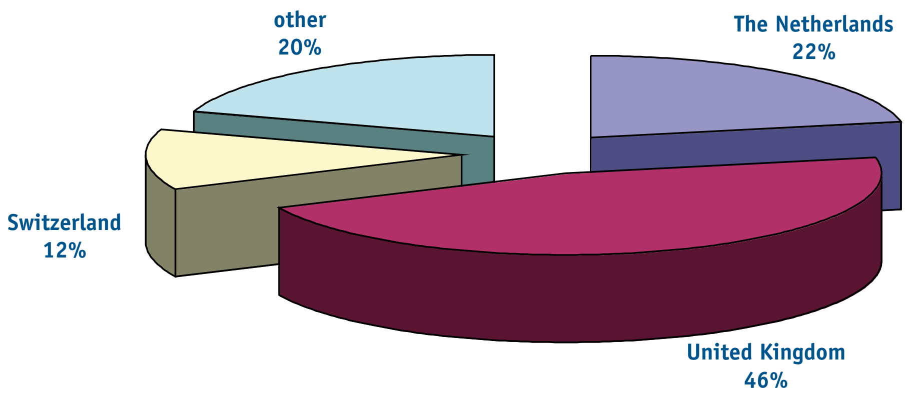
The mandatory enrolment element[17] of these schemes results in a very high **coverage ratio**. In Denmark, Finland and Sweden the whole workforce is enrolled in a mandatory private pension scheme. Hungary and Poland are still in the process of building out these systems and achieve a coverage ratio of respectively 58% and 68%.

7.2 Workplace pension provision – voluntary schemes[18]

According to the organisation of supplementary pension provision market in the Member States, different financing vehicles are used to operate such schemes: pension funds, book reserves systems or life-insurance companies. The EFRP Members reported the following data for 2004.

At the end of 2004**,** EURO **2.396 billion** was managed by **pension funds** for future workplace pension payments. The bulk of the assets (**80 %**) were held in the Netherlands (22%), the United Kingdom (46%) and Switzerland (12%).

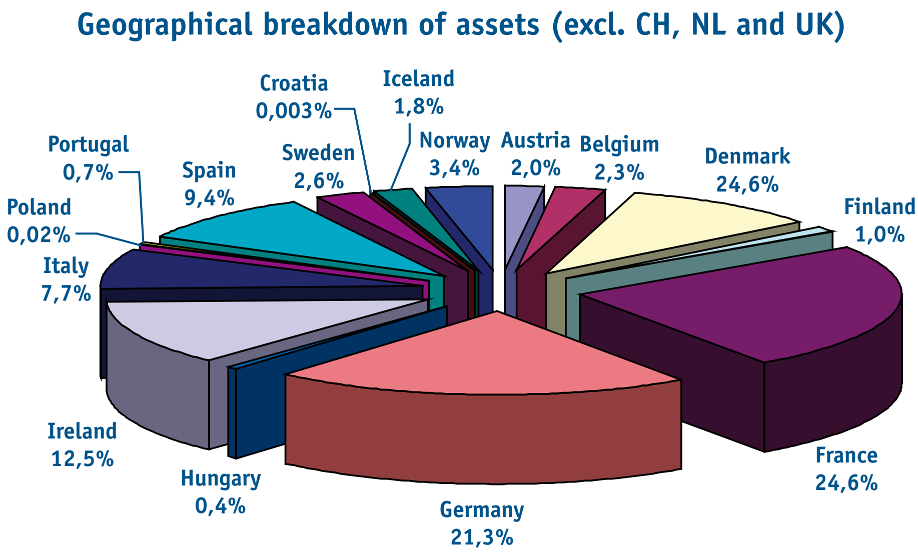
Geographical breakdown of assets



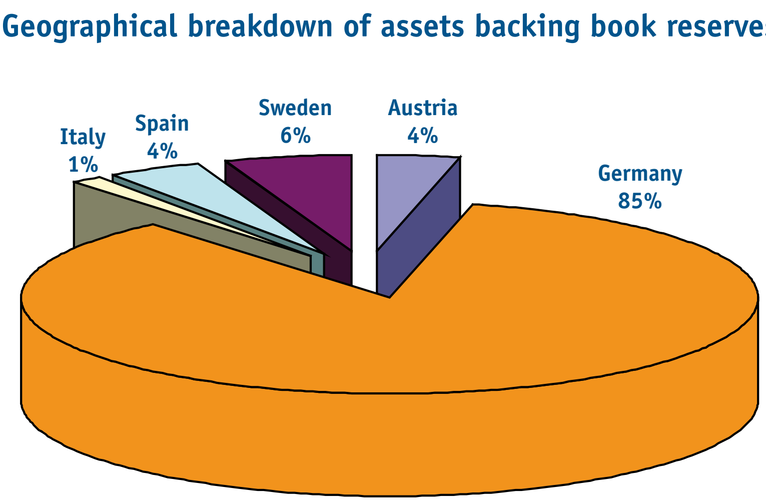
17 The mandatory enrolment is the only difference with the workplace pension schemes which are widespread in the EU-15 (voluntary): the individual is automatically enrolled by participating to the labour market. Whereas in a voluntary scheme the individual is either automatically enrolled on the basis of a collective bargaining agreement or on the basis of an voluntary decision of the employer to offer an occupational pension scheme as part of the employment conditions.

18 Please keep in mind that:
- for France, Germany and Iceland the assets are those at the end of 2003
- for France all assets are classified under the category "pension funds"
- the Swiss pension assets are probably underestimated (2002 data + growth rate)
- for Luxembourg no reliable data are available
- for Ireland there might be an overlap with third pillar pension schemes

The geographical breakdown of the other 20% of the assets managed by pension funds is illustrated as follows:



At the end of 2004, EURO **252 billion** euro was managed in **book reserves systems.** The geographical breakdown of the assets held in these systems is illustrated as follows:

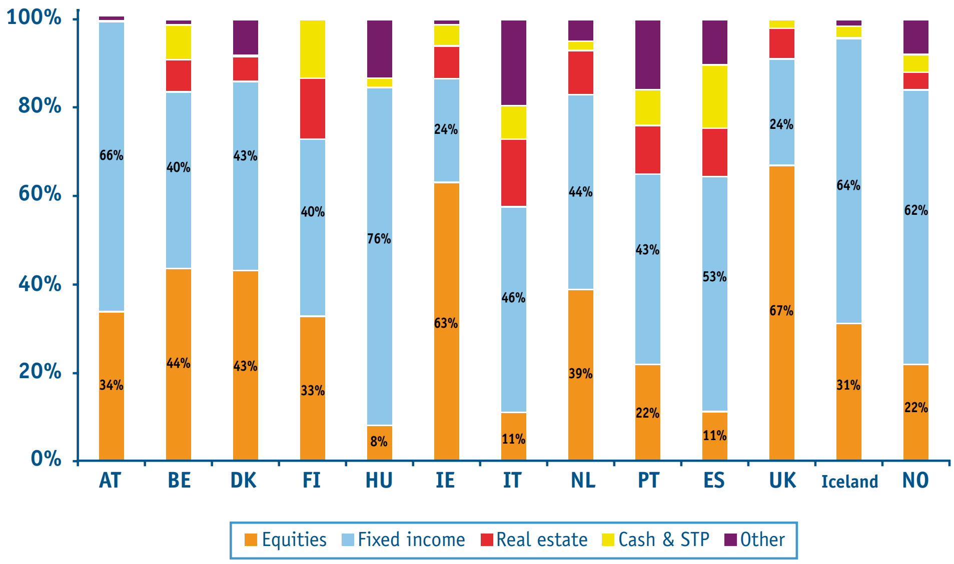


Life-insurance assets for occupational pensions as reported by the EFRP Membership[19] at the end of 2004 were valued at EURO **460 billion.**

19 Denmark, Germany, Sweden and the United Kingdom,

The asset allocation of **pension funds** at the end of 2004 for some Member countries is illustrated as follows:

Asset allocation in %



7.3 Looking ahead

In view of the increasing role of IORPs in financial markets and the economy as a whole, the related data requirements have increased over the past few years. The EFRP will continue to improve the consistency of its data collection of the 2nd pillar pension provision.

In 2006, a joint EU Commission (Eurostat)/European Central Bank (Directorate General statistics) Task Force will start to undertake an in-depth examination of the current data availability for Insurance Corporations and Pension Funds. The ERFP is very pleased with this initative and will participate in this Task Force.

8. Institutional Presence and Public Platforms

8.1 Institutional presence

The EFRP is represented in the following consultative / advisory bodies:

EU Commission Pensions Forum

The EU Commission Pensions Forum is composed of representatives of Member State governments, the social partners and other bodies active in the pension industry. The Pension Forum is a platform for exchange of information about problems and development at Community level affecting pensions.

The EFRP is represented by:

- Mr. Jaap MAASSEN, Chairman EFRP
- Ms. Chris VERHAEGEN, Secretary-General EFRP
- Mr. Withold GALINAT, BASF Pensionskasse - DE

CEIOPS Consultative Panel

In 2004, CEIOPS established a consultative panel of market participants to assist CEIOPS in the performance of its functions and in particular to ensure that the consultation process functions effectively. The Consultative Panel acts as a sounding board for CEIOPS.

The EFRP is represented by:

(2006-2008 term)

- Mr. Jaap MAASSEN, Chairman EFRP
- Ms. Penny GREEN, SAUL Trustee Company - UK

(2004-2006 term)

- Mr. Jaap MAASSEN, Chairman EFRP
- Mr. Peter THOMPSON, former EFRP Board Member – UK

Advisory Group on Corporate Governance and Company Law

The EU Commission set up in 2004 a consultative committee on Corporate Governance and Company Law to obtain technical advice on the implementation of the 2003 Company Law and Corporate Governance Action Plan. The Advisory Committee is composed of 20 members representing expertise from the private sector, the academic world and civil society.

The EFRP is represented by:

- Prof. Geert RAAIJMAKERS, Investment Department of ABP and University of Maastricht - NL

Expert Group on Alternative Investments

The EU Commission set up in 2005 an Expert Group on Alternative Investments to advise it on the current state and structure of, as well as trends relating to the EU market for hedge funds and private equity funds.

The EFRP is represented by:

- Mr. Robbert COOMANS - ABP Investment - NL
- Mr. Mag. Gernot Karl HEITZINGER - SMN Investment Services - AT

European Parliamentary Pension Forum (EPPF)

The objective of the EPPF is to provide a platform for dialogue between the European Parliament and the pensions industry community. Its primary aim is to disseminate knowledge in order to promote an informed debate on pensions policy within the European Parliament. The EFRP is a Member of the Steering Committee of the EPPF.

■ *OECD Working Party on Private Pensions*

Over the years, the EFRP has developed good relations with the OECD. Although the OECD produces mostly non-binding guidelines and recommendations, it is our opinion that the OECD's work has an influence on EU and Member State legislation.

The EFRP has observer status in the Working Group on Private Pensions and also in the Taskforce on Private Pension Statistics.

■ *IOPS (International Organisation of Pension Supervisors)*

In 2004, the International Network of Pension Regulators (INPRS), a voluntary network of pension regulators, formalised its structure and was renamed the **International Organisation of Pension Supervisors (IOPS).** The core goal of IOPS is to identify good practice in the field of private pension supervision.

The EFRP has observer status in IOPS.

8.2 Public platforms

The EFRP is proud to be invited on many occasions to deliver key speeches on pension policy and European pension developments. We face a very difficult task in balancing our resources with our need to communicate at different levels across the European Union.

In 2005, the EFRP was invited to take the floor in 11 different EU Member States to disseminate its ideas and opinions. Furthermore, in light of the accession of Bulgaria in 2007, the Chairman gave also a presentation in Sofia (17 February 2005) on the European pension challenges and the Secretary General was invited by the government of Ukraine to speak in Foros (30 September 2005) on the latest pension developments in the EU.

Without going into details, the main topics that EFRP were asked to speak about during 2005 were: the implementation of the IORP Directive, European pension challenges and the development of pan-European pension funds.

On 8 November 2005, EFRP hosted also a very successful dinner to coincide with the EU Commission's Pensions Forum taking place in Brussels, to offer a communication opportunity between the pensions industry and policy makers from Member States. This event was very well received and included delegates from the EU Commission Pensions Forum, officials from the EU Commission itself as well as some delegates from the UK Presidency Conference on 'Informed choices, retirement and savings'.

9. EFRP Organisation

9.1 EFRP's Board of Directors

CHAIRMAN
Jaap MAASSEN (NL)
Director of Pensions
ABP

FIRST VICE-CHAIRMAN
Angel MARTINEZ ALDAMA (ES)
General Director
Inverco

SECOND VICE-CHAIRMAN
Peter LINDBLAD (SE)
Managing Director
Pensionsgaranti


Wil BECKERS (NL)
Director
DSM Pension Services


Christian BÖHM (AT)
Managing Director
APK Pensionskasse AG


Robin ELLISON (UK)
Partner - Pinsent Masons
NAPF Chairman


Nora FINN (IE)
Chief Executive
IAPF


Anne SEIERSEN (DK)
Head of Department
Forsikring & Pension


Klaus STIEFERMANN (DE)
Managing Director
aba


Vincent VANDIER (FR)
Executive Director
AFPEN

9.2 EFRP's Member Associations

9.2.1 European Union

AUSTRIA

Fachverband der Pensionskassen
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fvpk@wko.at

BELGIUM

Belgische Vereniging van Pensioeninstellingen - BVPI /
Association Belge des Institutions de Pension - ABIP
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Centre Technique des Institutions de Prévoyance – CTIP
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Association Française de la gestion Financière – AFG
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75008 Paris
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Arbeitsgemeinschaft für Betriebliche Altersversorgung –aba
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20 Observer status

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IRELAND

Irish Association of Pension Funds – IAPF
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Assogestioni
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21 Observer status

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Associação Portuguesa de Fundos de Investimento, Pensões et Patrimónios APFIPP
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info@apfipp.pt

22 Observer status

SPAIN

Asociación de Instituciones de Inversión Colectiva y Fondos de Pensiones – INVERCO
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Confederación Española de Mutualidades – CNEPS
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28010 Madrid
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SWEDEN

The Swedish Association of Institutions for Retirement Provisions managed by social partners – SIRP
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UNITED KINGDOM

National Association of Pension Funds – NAPF
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rachel.boland@napf.co.uk

Association of British Insurers – ABI
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nigel.peaple@abi.org.uk

9.2.2 Non-EU Member Associations

CROATIA[23]

Association of Croatian Pension Funds Management Companies and Pension Insurance Companies
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Croatian Chamber of Economy
Banking and Finance Department
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mkovacic1@hgk.hr

ICELAND[24]

Landssamtok Lífeyrissjóda
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thorgeir@live.is

NORWAY[25]

Norske Pensjonkassers Forening
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rolf.skomsvold@pensjonskasser.no

SWITZERLAND

Association Suisse des Institutions de Prévoyance – ASIP
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hanspeter.konrad@asip.ch

23 Observer status
24 Observer status
25 Observer status

9.3 EFRP Supporters' Circle

Since 1997 the EFRP Supporter's Circle has provided individual companies with the opportunity of keeping a closer eye on the developments taking place within the field of European occupational pensions.

By joining the EFRP Supporter's Circle individual companies have direct access to high quality information as well as receiving a copy of the bi-monthly EFRP Newsletter. The Newsletter highlights current pension issues and can be a very useful tool for keeping up to date. The EFRP is also very keen to set up projects with the industry to promote the pan-European pensions market.

At 31 December 2005 the EFRP Supporter's Circle counted 20 supporters who are identified below:

ABN-AMRO Bank
ABN-AMRO Mellon Global Securities Services
AON Consulting
British Aerospace Public Ltd. Company
Capital Group International S.A.
European Treasury & Benefits Center Mars
Fidelity Institutional Asset Management
Goldman Sachs International
Hammonds
ING Group
Linklaters
Mercer Human Resource Consulting
Merrill Lynch Investment Managers
Northern Trust Management Services Ltd
OYAK (Turkish Armed Forces Pension Fund)
PricewaterhouseCoopers Accountants N.V.
Schroders Investment Management International
Standard Life Investments
State Street Bank GmbH
The Bank of New York

9.3.1 EFRP Supporter's Circle Event 2005

Each year in June the Supporters are invited for a one-to-one information session with key policy advisors from EU institutions and other relevant European level players.

EFRP Supporter's Circle Event

Hosted at the Committee of the Regions, with the following speakers:

From the EU Commission

- IORP Directive - **Mr. Ivo VAN ES**, *Economic and Policy Desk Officer Insurance and Pensions - DG Internal Market.*
- Proposal for a portability Directive - **Mr. George FISCHER**, *Head of Unit Social Protection: Pensions and Health - DG Employment, Social Affairs and Equal Opportunities.*
- Tax barriers for cross-border transfers of pension capital and withholding tax on dividend and interest payments - **Mr. Peter SCHONEWILLE**, *Administrator - DG Taxation and Customs Union.*
- EU Commission Green Paper on Investment Funds - **Mr. Niall BOHAN**, *Head of Unit Asset Management - DG Internal Market.*

From the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS)

- Functioning and challenges of the new Lamfalussy Level 3 Committee - **Mr. Alberto CORINTI**, *Secretary General.*

From the European Federation for Retirement Provision (EFRP)

- The involvement of stakeholders in CEIOPS - **Mr. Peter THOMPSON**, *Board Member.*
- Implementation of the IORP Directive - **Ms. Chris VERHAEGEN**, *Secretary General.*

9.4 EFRP Secretariat

Secretary-General: Ms. Chris VERHAEGEN

Economist: Mr. Jeroen CLICQ

Legal Counsel: Mr. Roger KOCH

Trainee solicitor: Ms. Julie NORMAN[26]

Office Manager: Ms. Kathleen VANDOREN[27]

Contact Details:

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www.efrp.org

26 On secondment from the Pensions Regulator (UK) (1 October 2005 – 31 March 2006)

27 (until 15/12/2005)

About the EFRP

The European Federation for Retirement Provision represents the various national associations of pension funds and similar institutions for pension provision. The EFRP has Members in most EU Member States. It will enlarge its Membership in other new EU Member States as and when representative organisations for occupational pensions emerge.

EFRP Membership at large consists of institutions for occupational (2nd pillar) retirement some of them also operating purely individual pension schemes. In some Member States up to 90-95 % of the work force have their occupational pension funded through EFRP Membership (e.g., Denmark, Netherlands, Poland, Sweden). Whereas in Germany, Spain, Ireland, the United Kingdom 80 % of the occupational pension provision is funded by EFRP Members.

Most EFRP Members are non-profit making associations.

Scheme members and beneficiaries are usually represented in their governance structures; many of them are managed on a paritarian basis between unions/employees and employers.

The EFRP's aim is to provide Europe with a financing vehicle (pension fund or similar) – not precluding any others catered for by commercial undertakings – that is affordable for large sections of the population and that provides a degree of intra- and inter-generational solidarity. This is feasible if the conditions for investment and the proper prudential framework facilitate this type of collectively organised occupational pension provision.

Through its Member Associations the EFRP represents € approximately 3,3 trillion of assets (2004) managed for future occupational pension payments.

73 million EU citizens are covered for their occupational pension plan by EFRP Member Associations.

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Annual Report

EFRP

European Federation
for Retirement Provision

EFRP 2005

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