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PensionsEurope Newsletter 2023/06

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1. Withholding taxes (FASTER)

On 19 June 2023, the Commission published its proposal for Faster and Safer Relief of Excess Withholding Taxes (FASTER). The Spanish presidency which started on 1st July 2023 has made this issue a priority in EU tax matters and circulated on 13 November 2023 a compromise. The latter added provisions capturing indirect investments and an opt-out system regarding relief at source for Member States having at the national level a comprehensive relief at source system.

However, on a file that needed to be decided unanimously, and following reluctance from several Member States that asked for more time to assess the changes, the Spanish presidency finally decided to pass the file to the upcoming Belgium presidency. Therefore, a state of play of EU tax files has been adopted by the ECOFIN meeting which took place on 8 December, covering the FASTER developments during the Spanish presidency.

PensionsEurope submitted its position paper on 18 September 2023 which was transmitted and taken into account by the Spanish presidency. PensionsEurope also met on 8 November 2023, with European Parliament (EP) representatives to discuss our positioning as the EP is working on its non-binding opinion. PensionsEurope will continue to engage with the upcoming Belgium presidency to convey our messages.

2. DORA level 2

ESAs have worked and continue to work on 13 policy instruments to implement the DORA framework which will be applicable on 17 January 2025.

Regarding the first batch of policy products, PensionsEurope answered the ESAs consultation on 11 September 2023 and met EIOPA with members on 27 October 2023 to reiterate our messages. The ESAs have until 17 January 2024 to deliver their first batch of policy products to the Commission.

The Commission also launched on 16 November 2023 a consultation on two draft delegated regulations under the DORA determining 1) certain criteria for critical ICT third-party service providers (CTPPs) and 2) oversight fees levied on such providers. This is the follow-up of the 29 September 2023 Joint European Supervisory Authorities' Technical Advice on the two issues mentioned above. PensionsEurope answered in June 2023 to the ESAs consultation related to this technical advice.

Furthermore, the ESAs launched on 8 December 2023 a new consultation for the second batch of policy products with drafts:

- RTS and ITS on content, timelines and templates on incident reporting;
- Guideline on aggregated costs and losses from major incidents;
- RTS on subcontracting of critical or important functions;
- RTS on oversight harmonisation;
- Guideline on oversight cooperation between ESAs and competent authorities;
- RTS on threat-led penetration testing (TLPT).

The deadline for this consultation is on 4 March 2024. PensionsEurope will organise adhoc FMR WG meetings to discuss this consultation and will answer it. ESAs have until 17 July 2024 to deliver their second batch of policy products to the Commission.

3. Framework for financial data access (FIDA)

The Commission published on 28 June 2023 its proposal on a framework for Financial Data Access (FIDA). We submitted on position paper on 31 October 2023 which highlights that FIDA should build on existing pension tracking services (PTS), to allow European citizens to continue having a holistic overview of their pension benefits including public pension rights.

We also indicate that experiences from other financial services such as payment services cannot be simply applied to the Institutions for occupational retirement provision (IORPs) which are included in the scope of this proposal and under a minimum harmonisation framework (i.e. IORP II directive).

Our position paper has been communicated to the Spanish presidency which scrutinized the text during several Council working party meetings. Following concerns raised by Member States, the Spanish presidency started drafting suggestions to clarify the text. This work will continue during the upcoming Belgium presidency. We will pursue our advocacy during the Belgium presidency.

The European Parliament also started to work on the file and is expected to publish its draft report in mid-December 2023. PensionsEurope met the ECR policy adviser on 27 November 2023 to convey our messages and sent our position paper to Accredited parliamentary assistants (APAs) involved in the file.

4. SFDR Level 1 Review

On 14 September 2023, the European Commission initiated a consultation to gather feedback on the Sustainable Finance Disclosure Regulation (SFDR). The SFDR, which has been in effect since March 2021, outlines how financial intermediaries should communicate sustainability information to investors. The consultation focuses on evaluating the current SFDR framework and its implementation. It also explores future possibilities for addressing any shortcomings.

In our answer, we aim to highlight the issues pension funds have been facing in the implementation of the SFDR. These include unclear definitions, a regulation designed for retail investors rather than collective scheme members and beneficiaries, and a lack of ESG data. Another significant problem is the overlap between SFDR and IORP II, complicating reporting under Article 6 of the SFDR.

We have been working on our answer to the consultation within the WG LTSI. We will submit our answer on Friday 15 December 2023.

5. ESAs' Report draft RTS on the review of PAI and financial product disclosures in the SFDR Delegated Regulation

On 4 December 2023, the ESAs published their Final Report amending the draft Regulatory Technical Standards (RTS) to the Delegated Regulation supplementing the SFDR.

To recall, the ESAs received a mandate from the EC on 28 April 2022 to review and revise the RTS included in the SFDR. They launched a consultation in April 2023. PensionsEurope submitted its answer on 4 July 2023.

In their report, the ESAs propose to include new social PAI indicators; to streamline the framework for the disclosure of PAI of investment decisions on the environment and society; to include new product disclosures on ''greenhouse gas emissions reduction'' targets. The ESAs also propose other technical revisions.

The European Commission is now planning to review the draft RTS and decide on its endorsement in the next three months. The ESAs indicated that the draft RTS would be applied independently of the level 1 review.

6. ESG rating activities

On 13 June 2023, the European Commission adopted a proposal on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities.

The regulation aims to give rules to ESG ratings, which currently experience a lack of transparency, presenting the risk of misselling and greenwashing.

PensionsEurope submitted its answer on 1st September 2023. On 21 November 2023, we released a joint statement with InsuranceEurope to call for the inclusion of ESG data in the scope of the regulation.

On 4 December 2023, the ECON committee adopted its report on the EC's ESG rating proposal. It was led by Rapporteur Aurore Lalucq (S&D, France). The EP made significant changes to the EC's proposal to strengthen transparency and competition further. MEPs endorsed the text as the basis for negotiations with MS. Trilogue discussions could start in early January, assuming the Council also establishes its General Approach in their meeting in December.

7. EMIR

European Parliament

On 28 November 2023, the Economic and Monetary Affairs Committee of the EP adopted the reports on the Regulation and Directive as regards the EMIR review. Those reports include new rules to curb third country clearing risks, improve the EU's clearing services and allow for EU supervision.

MEPs main goal is to centralise the supervision of EU CCPs and address the financial stability risks caused by the EU clearing members and clients being exposed to systemically important third-country CCPs. They also want to enhance clearing services and European CCPs. See below the main new elements that the reports have introduced:

- **Supervision**

MEPs proposed that ESMA should directly supervise the EU CCPs. They should apply to the ESMA for authorisation and report their risk management data as well as consult and inform ESMA about their recovery and resolution plans. Recognised third country CCPs should annually report to ESMA the scope of their clearing activity.

- **Active account**

MEPs agreed that financial counterparties or non-financial counterparties that are subject to the clearing obligation should hold at least one active account at a CCP established in the EU and regularly clear their systematically important products. Given the novelty of the requirement, MEPs also agreed that further measures such as the requirement to clear at least a proportion of trades through the active account should be phased in gradually and only after the Commission carries out a cost-benefit analysis and assesses the impact of the requirement on financial stability and international competitiveness of EU counterparties. According to the report, an account is considered active if it posts initial and daily variation margins, has in place the necessary IT connectivity, internal processes and legal documentation and can demonstrate that its functioning would not be affected in the event of a significant and sudden increase in clearing activity.

- **Reduced regulatory burden**

CCPs would be subject to streamlined procedures if they provide additional services or change risk models. Where a CCP intends to clear a new currency or offer a new settlement mechanism, it would be subject to a non-objection procedure. In case a CCP adopts changes on a regular basis ('business as usual') it would notify ESMA before implementing them, instead of being subject to authorisation procedures. This should significantly alleviate the burden on competent authorities, and increase the capacity of CCPs to implement changes that will not modify their risk profile.

- **Transparency**

The clients of the EU CCPs, as well as recognised third-country CCPs, should be informed about an option to clear a derivative contract in an EU CCP, which should be transparent on fees, risks associated with the service provided and volumes of cleared transactions.

Council

On 6 December 2023, the Council also adopted its negotiating mandate on the regulation and the directive. See below the main elements of the mandate:

- **Supervision**

The council wants to strengthen the role of supervisory frameworks, while ensuring an appropriate division of tasks between national authorities establishing coordination at the European level, in particular by establishing a Joint Monitoring Mechanism and providing ESMA with a coordination role in cross-border emergencies.

- **Active account**

The Council set a solid **active account requirement (AAR) that will** require certain financial and non-financial counterparties to have an account at an EU CCP, which includes operational elements such as the ability to handle the counterparty's transactions at short notice if need be and activity elements so that the account is effectively used. This is ensured by a number of requirements, which have to be fulfilled by these accounts, including requirements for counterparties above a certain threshold to clear trades in the most relevant sub-categories of derivatives of substantial systemic importance defined in terms of class of derivative, size and maturity.

- **Transparency**

The Council wants to ensure that in practice it is feasible for supervisory authorities to apply streamlined supervisory processes, such as authorisation and validation procedures.

Next steps

The financial services attaches had a first meeting on 11 December to prepare the trilogues that will follow. PensionsEurope had prepared its position paper on EMIR. Moreover, PensionsEurope cosigned the relevant initiatives with other financial trade associations that were sent to the permanent representations. We will continue our advocacy efforts to advocate our positions.

8. Consultation on the rationalization of reporting requirements

PensionsEurope welcomed this EC call for evidence initiative that aims to identify reporting requirements in EU legislation that can be removed or rationalized without undermining the policy objectives of the EU. On 29 November 2023, we submitted our answer to the European Commission.

Over the past years, the regulatory burden on pension funds has and will continue to increase significantly due to the IORP II Directive and cross-sectoral legislation such as the Sustainable Finance Disclosure Regulation (SFDR) and Digital Operational Resilience Act (DORA) resulting in unnecessarily high reporting burden and administrative costs. These costs restrict the industry´s capacity to make investments contributing to economic growth and the twin transition, i.e., green and digital transformation. This in turn will have a negative consequence on pension funds' possibility to provide good retirement incomes as pension benefits increasingly depend on investment returns. The following issues were covered in our paper:

- Sustainability
- Securities reporting
- MiFID
- Stress Tests
- Align Reporting Requirements

9. 2023 C&S seminar

PensionsEurope organised on 15 November 2023 its Corporate and Supporter Members Seminar. Julio Suarez, Research Director at AFME took stock of the Capital Markets Union (CMU) by presenting their CMU KPI report to which PensionsEurope contributed. He highlighted that no medium-term progress on CMU has been visible.

Furthermore, a discussion on the IORPII directive review took place with several speakers including Justin Wray, Head of Policy at EIOPA, and Didier Millerot, Head of Unit, Insurance and Pension at DG FISMA, European Commission, under the moderation of Marnik Van Impe, Senior advisor at Pensioplus. Ronald Heijin, Vice Chairman at PGB, and Eric Bergamin, Partner at Eversheds Sutherland also participated in the discussion. The discussion focused on the lessons learned from EIOPA’s advice on the IORPII review and the preliminary views of the EC on this review.

10. Launch of PensionsEurope’s new website

We are pleased to announce that the new PensionsEurope website will be launched on 15 December 2023. The revamp aims to enhance navigation, accessibility, and include interactive features like our webinars. Additionally, the upgrade focuses on simplifying event registration.

Members will receive an email on 15 December to register to the new website with detailed instructions on how to create their accounts. Please note that previous login details will not be available. Instead, every member will have to create a new account.

11. General Assembly Meeting & Annual Conference 2024

Our Belgian member, PensioPlus, will be hosting the Spring General Assembly Meeting on **26-27 April 2024.**

Similar to last year, we plan to organise the Annual Conference in the same week**.** The programme will be the following:

- **25 April:** Annual Conference and cocktail reception
- **26 April**: Board Meeting & General Assembly Meeting
- **27 April**: Social programme for members and partners

Thanks to the help of PensioPlus, we were able to secure the KBC Grote Markt venue for free. We now continue working on the conference’s organisation, including finding sponsors and finalising the conference’s programme.