10 June 2020

PENSIONS EUROPE

Subject: **The High-Level Forum Report on "A new Vision for Europe's capital markets"**

Action required:
For information

Members will find below an overview of the final report of the HLG on CMU "A new Vision for Europe's capital markets".

Members can find the HLF final report attached. The report was published today, Wednesday 10 June.

The note is aimed at providing members with a first preliminary assessment of the recommendations relevant for PensionsEurope.

Introduction

Building on its goal to finalise the creation of capital markets union (CMU), in November 2019 the Commission established the High-Level Forum (HLF) on Capital Markets Union (CMU), an expert group advising on targeted policy recommendations for future CMU actions. You can download the list of members here.

On 20 February 2020 the HLF published its interim report. The report did not suggest any specific policy proposals, but set out a new vision for the future of the CMU and has guided the work of the Forum in the coming months.

On 10 June 2020 the HLF published its final report "A new Vision for Europe's capital markets".

1. Recommendations in the areas of pensions

The HLF tabled three specific recommendations in the areas of pensions. **The HLF recommends that the Commission (i) develops a dashboard to measure Member States progress on pension adequacy and sustainability, (ii) encourages the development of pension tracking systems for individuals, and (iii) supports the introduction of auto-enrolment systems to stimulate adequate pension coverage across all Member States.**

These recommendations are seen by the HLF as one of those very precise and clear recommendations that should be proposed all-together to move Europe forward.

Members can find below *in Italics* the HLF recommendations in the area of pensions, accompanied by PensionsEurope Secretariat's preliminary comments.

In the recommendation fiche on pensions on pages 85-88 of the HLF report members can find the issue at stake, the justification of the suggested measures, the legal amendments that would be required, and a feasibility and benefit analysis.

The HLF on CMU invites the Commission to pursue the following three initiatives in the area of pensions:

1) Pension dashboards for Member States:
The Commission should develop a dashboard with indicators to monitor the state of play in Member States and, where applicable, the progress achieved by Member States with regard to pension sustainability and pension adequacy. Each indicator should take into account the three pillars and be composed of aggregated, anonymised data. Indicators should be accompanied by a pension adequacy target.

- *The Commission should consider a reporting system whereby providers of Pillar II and Pillar III pensions annually report relevant anonymised aggregate information on their clients and on assets under management to National Competent Authorities.*
- *Member States should be obliged to submit the collected, aggregated data to a centralised point.*
- *Indicators should be calculated and published on an annual basis, reflecting the sustainability and adequacy of pension systems across the three pillars in the Member States. Where appropriate, these indicators should feature prominently in the European Semester and the country-specific recommendations. The methodology could be jointly agreed by the Commission and the Economic Policy Committee (EPC).*

PensionsEurope Secretariat comments
The development of a dashboard with indicators and targets <u>could help</u> creating a political setting that incentivizes identifying and addressing pension systems' shortcomings.
However, major <u>issues</u> are related to (i) the feasibility of creating indicators and targets capable to meaningfully represent the diversity of pension systems and their roles in the overall social and economic environment across different countries, and to (ii) the costs required by the establishment of harmonised reporting requirements.
The HLF does not include any indication of the <u>timeline</u> for the establishment of the dashboard. It only includes the request to the Commission to report on best practices by end 2022.

2) Pension tracking systems for individuals:

- *The Commission should put in place a requirement for Pillar II and Pillar III providers to report on an annual basis their respective data of individuals' savings, to complement information (submitted by Member States) on individuals' accrued rights under Pillar 1. The process by which this is achieved should be developed in consultation with the European Data Protection Board. National tracking systems should feed into an EU portal, such as the European Tracking System, which would allow EU citizens with mobile careers to check their pension status irrespective of the Member States of their accrued rights.*
- *For this purpose, the submitted information needs to be standardised and requires the possibility to extend the reported information. Upon successful implementation of pension tracking systems, the Commission is to work towards extending reporting requirements to additional suitable products and initiatives, e.g. long-term investments comparable to pension products and retirement saving initiatives (e.g. sidecar savings accounts).*

- *The HLF calls on the industry to support and contribute to financing the full roll-out of the European Tracking System, considering that public-private partnerships would be a good solution for funding such a system, which should be supervised by public authorities to ensure trust.*

PensionsEurope Secretariat comments
PensionsEurope supports the establishment of a EU ETS and is currently actively cooperating with the partners of the ETS Project.

Political support
The development of the ETS is supported[1] and financed[2] by the EC since a long time. In addition, also the HLG on pensions tabled a recommendation to Member States, asking them to *set up or facilitate national pension tracking services covering their respective pension schemes to support individuals' retirement planning*.

Timeline
The HLF does not include any indication of the timeline for the establishment of the ETS. It only includes the request to the Commission to report on best practices on ETS by end 2022. However, some information can be derived from the ETS Project. According to the ETS project leader[3], in the next three to five-year phase it should be possible to establish the ETS in those 12 EU member states that already have a national tracking service in place. A fully functioning ETS covering the entire EU could take up to 12 years to achieve.

Open issues
On top of the needed cross-border political support, the main open issue related to this project remains the funding. The HLF calls on the industry to contribute to the financing of the full-roll out of the ETS. This is in line with what suggested in the Final Report of the TTYPE project. The TTYPE business plan analysed on pages 37-44 the huge financial efforts that would be required.
Other open issues are e.g. related to data protection and to the setting up of an entity/organization to manage the system.

3) Auto-enrolment in occupational pension schemes:
In line with the conclusions of its Adequacy report[4] and the report of the High Level Group of Experts on Pensions[5], to stimulate adequate pension coverage across all Member States the Commission should consider ways to support the introduction of auto-enrolment, in particular where there is no mandatory occupational scheme in place.[6] Increasing levels of pension coverage and savings will reduce the risk of future old-age poverty and contribute to deeper, more integrated and more liquid European capital markets. To this end:

[1] See, for instance, the 2012 White Paper on Pensions and the 2018 Pension Adequacy Report
[2] The EC has financially supported the TTYPE Project and the ETS Project
[3] See article in IPE: https://www.ipe.com/news/in-depth-basic-european-tracking-platform-to-be-operational-by-end-of-2021/10045987.article
[4] European Commission, 'Pension Adequacy 2018, current and future income adequacy in old age in the EU'. On page 135, where the Commission lists ways to boost pension accrual by enrolling, the Commission starts with 'upgrading **voluntary enrolment** to **mandatory** and reducing possibilities for exemption' and continues with 'changing voluntary enrolment from **opt-in** to **opt-out**'.
[5] https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=38547.
[6] This is without prejudice to existing mandatory regimes in Member States with high participation in occupational pensions.

a) The Commission should identify best practices in automatically enrolling workers into occupational pensions with a view to developing a blueprint to provide principles and proposals on good occupational schemes and how engagement and guidance can be harnessed to secure adequate retirement incomes for EU citizens in the future, which Member States can tailor to their particular pension landscape.
b) The Commission should stimulate pension accrual and pension adequacy in alignment with the Pension Dashboard approach referenced above, by providing best practices for applicable occupational pension systems at Member State level.
c) The Commission should table a legislative proposal to require auto-enrolment into default occupational pension schemes at Member State level with the intent of delivering adequate pension savings over a working life. That proposal must be subject to a full impact assessment specifying the objectives, making the case for auto-enrolment and identifying the main elements and minimum requirements that should form part of the legislative proposal.

PensionsEurope Secretariat comments
PensionsEurope supports those initiatives aimed at increasing pension coverage and savings.
We have often taken auto-enrolment as one of those welcomed national initiatives able to improve pension adequacy and sustainability. However, the HLF is going beyond what has been suggested by the EC in the Adequacy Report and by the HLG on Pensions, and **this requires careful consideration from our members**. The HLF recommendation, indeed, **includes a new EU legislative proposal requiring default occupational pension scheme membership at Member State level.**

Timeline
The HLF is asking the commission to report on best practices for auto-enrolment by end 2021. In the HLF view, an introduction of auto-enrolment should be supported across Member States by developing a blueprint that provides principles for good occupational pension schemes, which Member States can tailor to their particular pension landscape.

The Secretariat also highlights that:
- it is very positive that the HLF notes *that it is evident that the Member States with the most developed market-based pension systems also have the highest pensions adequacy and the most developed capital markets. Better and fair opportunities for EU citizens to complement retirement income with capital income carry great potential to foster capital markets in the EU.*

- It is very positive that the HLF supports the PEPP: the report mention that making a success of the pan-European personal pension product across the EU is important and argues that, in the future, PEPP could be very useful for some employees.

2. Other relevant recommendations

In addition to the three recommendations specifically addressing pensions, there are several other recommendations included in the report relevant for PensionsEurope, e.g.:
- Recommendation on WHT

- Recommendation on supervision

- Recommendation on an EU Single Access Point

- Recommendation on financial literacy/education and investment culture

- Recommendation in the area of distribution, advice, and disclosure
- Recommendation on European long-term investment funds
- Recommendation on scaling up the European securitisation market
- Recommendation on open finance
- Recommendation on insolvency

Members will find below some additional insights and considerations on the HLF recommendations:

A. Recommendation on Withholding Tax

In general, the High-Level Forum Report on "A new Vision for Europe's capital markets" ('HLF CMU Report') on withholding tax (WHT) is very much in line with what PensionsEurope has stressed over the past years.

Therefore, PensionsEurope can warmly welcome the text on WHT and the recommendation that the Commission puts forward a legislative proposal to introduce a standardised system for relief at source of withholding tax based on authorised information agents and withholding agents.

On WHT, the HLF CMU Report:

- Notes that taxes on returns from investments, for example, may first have to be paid both in the Member States of the investment and investor, to be afterwards reimbursed. Refund procedures are not only different across Member States, but are considered inefficient and vulnerable to fraud.
    - PensionsEurope has discussed these WHT obstacles for instance in PensionsEurope position paper on the withholding tax refund barriers to cross-border investment in the EU (April 2016).
- Stresses that introducing a single digital EU system based on EU law, common definitions, common processes, and a single form will make it easier to re-balance taxes paid cross-border, while reducing administrative burden and costs. It will facilitate cross-border investments and reduce fraud. A single EU system would allow to get an immediate relief at source on withholding taxes for investment income (PensionsEurope has emphasised that a relief at source is the best practice for pension funds).
- **Recommends that the Commission puts forward a legislative proposal to introduce a standardised system for relief at source of withholding tax based on authorised information agents and withholding agents.**
    - In PensionsEurope position paper on smoothing WHT procedures beyond Code of Conduct - EU tax register of recognised pension institutions (March 2018), beyond our tax register proposal, **PensionsEurope has also proposed developing and using**

one (standardized) form across the EU to determine whether a pension institution qualifies for tax relief in a respective Member State.

- Also the report of the Next CMU High-Level Group proposed developing a straightforward EU procedure for repayment of withholding taxes to investors.
- There are also many other possible improvements including various possibilities and solutions for instance in the field of blockchain and cloud services.
- **We hope and expect that the EC Action Plan on the Capital Markets Union (to be published in Q4 2020) will contain some follow-up to the Code of Conduct to improve the current burdensome and costly WHT procedures across Europe.**

B. Recommendation on supervision

The Commission is invited to set out a high-quality, well-resourced, and convergent supervision based on a single rulebook as it is a key pre-requisite for a well-functioning CMU. **ESMA and EIOPAs' horizontal powers will need to be strengthened to enhance European supervisory convergence**, including by reforming their governance and strengthening their powers and toolkits, with wider powers in crisis management.

Transitioning from Directives to Regulations would be necessary to further harmonise and simplify the financial legislative framework. The Commission will need to ensure that the substance and form of directives that work well will not be compromised in the transformational process.

A more convergent supervision of the insurance and pensions sectors is required and hence a strengthening of the powers and responsibilities of EIOPA. The challenge is to define an efficient federative supervisory European model, split between prudential and market conduct, the leitmotif being to determine the optimal level for supervision (European or national) for different entities in conformity with the subsidiarity and proportionality principles of the Treaty. The recommendation does not put forward any additional areas for the ESMA's and EIOPA's direct supervisory competence.

Legal amendments would be introduced in the relevant Union sector legislation falling within EIOPA's scope of action at the latest by mid-2021.

- to require EIOPA to conduct independent mandatory regular reviews of national authorities in the specific areas of particular relevance to supervisory convergence.
- to enable EIOPA to under certain circumstances be able to temporarily disapply EU law by way of issuing no-action letters;
- to put EIOPA in charge of further harmonising national approaches regarding administrative practices (e.g., registration procedures, approval procedures, authorisation procedures, translation requirements) to issue guidelines and propose draft regulatory technical standards for the Commission to adopt;
- granting EIOPA a key coordination role within its respective remit of action to ensure consistency in the application of EU standards in the area of green finance
- granting EIOPA binding emergency powers to ensure coordinated responses across all Member States in crisis management situation and with appropriately constrained scope.

EIOPA governance framework would also have to be reformed immediately:

- replacing the current Management Board by a new "Executive Board" composed of the chairperson, the vice-chairperson as well as four independent members to be appointed by Council after confirmation by the Parliament. The Executive Board should deal with day-to-day administration and human resource matters and prepare the decisions of the Supervisory Board.
- renaming the Board of Supervisors (composed of the 27 heads of national supervisory authorities and the chairperson) "Supervisory Board" and adding the members of the Executive Board to its composition. The Supervisory Board should be charged with decision making in the areas related to supervisory convergence, direct supervision, tasks of a regulatory nature such as regulatory technical standards and setting the general direction of EIOPA. It should take decisions by simple majority voting, with each member having one vote.
- ensuring that there is balanced representation in the stakeholder groups between industry representatives and retail user/consumers.

Assessment

While the outcome of the recent ESAs' review (2019) did not increase the powers provided to EIOPA in terms of pension funds' supervision, the HLF report on CMU reopens this debate and aims at higher convergence in supervisory practices and higher level of harmonisation in sectoral legislations. PensionsEurope actively participated in the last process for the ESAs review and will reiterate its position ahead of this new potential ESAs review.

1. Pension institutions are embedded in national social and labour law. Occupational pensions are also built on the foundation of first pillar pensions and therefore closely linked to Member States' social security systems. National prudential legislation and supervision take these national elements into account. **A one-size-fits-all approach to the European legislation would be detrimental as it would not take into account the heterogeneity and complexity of the different combined first and second pillar systems**. PensionsEurope encourages EU policy-makers to take into account these specificities in a potential new review of the European Supervisory Authorities.

2. HLF makes a general comment that further harmonising and simplifying the financial legislative framework by way of transitioning from Directives to Regulations would be necessary. Our view would clearly be that **transitioning IORP II Directive to a IORP Regulation would be inappropriate and totally change the present occupational pensions landscape in Europe, which is for a major part based on national social and labour law and not EU internal market legislation**.

3. PensionsEurope also questions the need for the enforcement of supervisory convergence in the area of occupational pensions. The CMU report would entail new powers for EIOPA to review national supervisory authorities' supervisory activities. **Pension funds are concerned EIOPA would employ these tools to urge national supervisors to adopt its view of how pension funds should be regulated**.

4. **The governance structure of EIOPA should ensure that decision-making is underpinned by sufficient expertise in the area of pensions**. Already today, the expertise of its management structures corresponds to the stronger involvement of EIOPA in insurance. EU policy-makers should ensure the Executive Board has the right competences and governance structure to take adequate decisions on all policy areas within its remit.

C. Recommendation on an EU Single Access Point

The Commission is invited to:

- Propose legislation for ESMA to establish an EU-wide digital access platform (EU Single Access Point, or "ESAP") to companies' public financial and non-financial information, as well as other financial product or activity-relevant public information, which shall be freely accessible to the public and free of fees or license use.
- Ensure that companies (listed and non-listed) are required to submit all the public information only once through a single reporting channel.
- Conduct work on harmonising the content and, if appropriate, the format of companies' public information to foster better comparability and usability of data.

The EU Single Access Point would include information disclosed by companies pursuant to securities markets legislation including at least the Transparency Directive, Non-Financial Reporting Directive, Prospectus Regulation, Shareholders Rights Directive, Market Abuse Regulation, Short Selling Regulation and Take-Over Bid Directive. The Commission should mandate ESMA to assess the possibility to expand the scope of the EU Single Access Point to include public information disclosed by non-listed companies including notably non-listed SMEs, on a voluntary basis.

Assessment:

PensionsEurope welcomes the recommendation on the EU Single Access Point. We have raised our concerns related to the lack of easily accessible, reliable, understandable and comparable public information on investee companies. Market forces and regulatory developments have increased the need for data on investee companies and other market data, over the last few decades. However, the cost of data is continuously and unduly increasing with negative effects on data users, including pension funds and their asset managers. The establishment of the ESAP would mitigate most of these effects.

It is also noteworthy that the recent regulatory developments in the context of the EU Sustainable Finance agenda create an urgent need for publicly available ESG data as well as how to enhance their sourcing. Compliance with the new disclosure obligations introduced by the sustainability disclosures Regulation requires financial market participants to have access to comparable robust and reliable ESG data at the level of companies. Unfortunately, the availability of quality, comparable, reliable and public ESG data is currently rather limited and insufficient to comply with the increasing expectations and new regulatory requirements due to apply shortly. On June 9th, jointly with EACB, EBF, EFAMA, ESBG and Insurance Europe, PensionsEurope sent a letter to Mr. John Berrigan (Director General, DG FISMA) with the purpose to emphasise the increasing need of ESG data on investee companies, triggered by the new Sustainable Finance legislation and to call for the creation of an open source EU database. PensionsEurope also raised its concerns arising from the scarce availibility of ESG data on investee companies in its respone to the European Commission's consultaiton on the review of the Non-Financial Reporting Directive.

Calendar:

- The Commission should put forward a legislative proposal by mid-2021 to task ESMA with setting up the ESAP IT structure and providing ESMA with adequate ad hoc funds and resources to deliver on this project.
- ESMA should identify the most suitable IT structure for the ESAP by mid-2022.
- ESMA should roll out the ESAP's first stage by Q2 2023.

D. Recommendation on financial literacy/education and investment culture

The report includes several recommendation on these topics and PensionsEurope Secretariat believes they should be supported. Specifically in relation with pensions, the HLF e.g. notes that *raising awareness of the need for individuals to make adequate provisions for their future retirement income, for example through individual consolidated annual pension statements, and increasing the understanding of appropriate forms of long-term investment will encourage them to seek suitable solutions and invest in suitable products.*
The HLF also notes that *increasing financial literacy could help citizens to prepare and save for retirement.*
Also, the HLG recommends Member States to promote measures that support the provision of free financial guidance (different from financial advice) to consumers in relation to investing and pension saving, including through digital means.

E. Recommendation in the areas of distribution, advice, and disclosure

The HLG tables several recommendations in the area of distribution, advice, and disclosure related to inducements, advisors' qualification, non-professional qualified investor category, disclosure of performance and cost disclosure (the latter would also require amendments to the IORP II Directive and the PEPP Regulation), and investment product databases and comparison tools.
PensionsEurope Secretariat highlight that many of the recommendations might be relevant for pension funds and for the services they use. Caution must be used in the assessment of the idea of converging disclosure requirements across sectoral frameworks, as the IORP II Directive (and the PEPP Regulation) already provide strong and recently set disclosure requirements.

Some elements of the forthcoming review of MiFID II and MiFIR to improve investor protection, expected by the end of the year are also part of the CMU report.

F. Recommendation on European long-term investment funds

The Member States are invited to simplify the tax rules applicable to European Long-term Investment Funds (ELTIFs) and/or preferential tax treatment for ELTIFs. In addition, Member States should consider tax incentives to promote long-term investment into SMEs through ELTIFs. The Commission is invited to review the ELTIF Regulation by end 2020, with a view to reducing barriers to investments by investors and broadening the scope of eligible assets and investments.

PensionsEurope welcomes the recommendation on ETLIFs since, beyond certain types of retail investors, ELTIFs hold promise for institutional investors as well, and the report on CMU specifies that consideration should be given to encouraging wider institutional take-up.

G. Recommendation on scaling up the European securitisation market

In order to scale up the securitisation market in the EU, the Commission is invited to address several key issues related to the securitisation and STS (simple, transparent and standardized) securitisation frameworks, which are the main obstacles for the development of a robust securitisation market, whether from the point of view of issuers or investors.

PensionsEurope welcomes any initiative that promotes the development of EU securitisation markets, help ease investors' analysis and increase the comparability of securitisation instruments across the EU. It is however noteworthy that the shift towards high-quality securitisations should not prevent the development of other, non-standardised, securitised products.

H. Recommendation on open finance

The Commission is invited to introduce a harmonised and balanced open finance regulatory framework, covering financial and only non-financial information relevant to facilitating financial planning or encouraging investment (i.e. ESG preferences, suitability assessment), with a goal to foster better competition between providers of financial services and equip retail investors with better tools to manage their finances and investments, while seeking to ensure a level playing field between all providers of financial services.

This open finance regulatory framework should apply to providers of financial services and cover savings accounts, investment accounts, **pension savings**, mortgages, consumer credit and insurance products, and should be comparable with the open banking provisions introduced by the Payment Services Directive (PSD 2). The European Commission should adopt a proposal for a new legislative framework on open finance by the end of 2021. The co-legislators should adopt the legislation within one year, i.e. by 2022.

I. Recommendation on insolvency

The Commissions is invited to adopt a legislative proposal for minimum harmonisation of certain targeted elements of core non-bank corporate insolvency laws, including a definition of triggers for insolvency proceedings, harmonised rules for the ranking of claims (which comprises legal convergence on the position of secured creditors in insolvency), and further core elements such as avoidance actions. A public consultation is to be published in September 2020.