III

CHAPTER

SUPERVISION OF PENSION FUNDS

1. Developments in the pension funds sector in 2002

1.1. Pension funds

In 2002, the CSSF approved three new pension funds subject to the Law of 8 June 1999 as amended, which were established in the legal form of pension savings associations (Assep).

- K BRIDGE, setting up a multi-employer pension fund, was created by Kaupthing hf. Reykjavik and Kaupthing Services S.A. Lausanne.

- PENSIONINVEST was created by HVB Banque Luxembourg S.A. and is reserved for the employees of HVB Banque Luxembourg S.A.

- The companies Clearstream International S.A., Clearstream Services S.A. and Clearstream Banking Luxembourg S.A. created the pension fund THE CLEARSTREAM LUXEMBOURG PENSION FUND with the aim of setting up a pension fund for the employees of the Clearstream group in Luxembourg.

The approval of these new pension funds raises the number of pension funds subject to the Law of 8 June 1999 as amended to seven – six Assep and one Sepcav – as at 31 December 2002.

Half a dozen applications for approval are currently being processed, among which several pension funds mainly reserved for Luxembourg employees, which are expected to be approved in the course of 2003. "International" files are being examined, but their progress seems to be slowed down by current international developments. Indeed, the imminent perspective of a harmonised legal framework relating to occupational retirement within the European Union probably induces promoters to adopt a wait-and-see position. The CSSF expects activities to continue their slow but ongoing progress in 2003.

List of pension funds subject to CSSF supervision as at 31 December 2002

Pension savings associations (Assep)

DEXIA PENSION FUND
69, route d'Esch, L-2953 Luxembourg
K BRIDGE
23, avenue de la Porte-Neuve, L-2227 Luxembourg
PENSIONINVEST
4, rue Alphonse Weicker, L-2721 Luxembourg
PRIME PENSION, BGL ASSEP B
50, avenue J.F. Kennedy, L-2951 Luxembourg
THE CLEARSTREAM LUXEMBOURG PENSION FUND
42, avenue J. F. Kennedy, L-1855 Luxembourg
THE UNILEVER INTERNATIONAL PENSION PLAN
5, rue Plaetis, L-2338 Luxembourg

Pension savings companies with variable capital (Sepcav)

KPMG – LOMBARD INTERNATIONAL PENSION SCHEME
Airport Center, 2, route de Trèves, L-2633 Senningerberg

1.2. Liability managers

Following the registration during 2002 of HEPTA CONSULT S.A. and SWISS LIFE Luxembourg S.A. on the official list of professionals allowed to act as liability managers for pension funds subject to the Law of 8 June 1999 as amended, the number of liability managers of pension funds approved by the CSSF amounted to eight as at 31 December 2002.

Official list of professionals approved to act as liability managers for pension funds subject to the Law of 8 June 1999 as amended

ACTUALUX S.A.
5, place de la Gare, L-1616 Luxembourg
DEXIA INSURANCE & PENSIONS SERVICES S.A.
2, rue Nicolas Bové, L-1253 Luxembourg
ESOFAC INTERNATIONAL S.A.
37, rue Michel Engels, L-1465 Luxembourg
HEPTA CONSULT S.A.
54, avenue Pasteur, L-2310 Luxembourg
LA LUXEMBOURGEOISE-VIE S.A.
51, avenue de la Gare, L-1611 Luxembourg
LE FOYER VIE Compagnie Luxembourgeoise d'Assurances S.A.
6, rue Albert Borschette, L-1246 Luxembourg
SWISS LIFE Luxembourg S.A.
1, rue du Potager, L-2347 Luxembourg-Kirchberg
MERCER HUMAN RESOURCE CONSULTING S.A.
68, boulevard du Souverain, B-1170 Bruxelles

2. Developments in the legal framework

Following the adoption of the Law of 1 August 2001 amending the legal framework applicable to pension funds, no legal or regulatory changes took place in 2002.

During 2003, the CSSF plans to introduce, by means of a Circular, an official reporting system for pension funds, while until now, the CSSF required pension funds to report a certain number of financial information on a quarterly basis in a format of their choice.

Moreover, works on the transposition of the Directive on institutions for occupational retirement provision will most probably start as soon as the Directive is adopted, which is planned for the first half of 2003.

- **Proposal for a Directive on institutions for occupational retirement provision**

In 2002, substantial progress was made concerning the adoption of the proposal for a Directive on institutions for occupational retirement provision, which was the object of a detailed comment in the 2001 Annual Report.

On 11 October 2000, the European Commission presented a proposal for a Directive seeking minimal harmonisation of prudential standards for institutions for occupational retirement provision (IORPs), the mutual recognition of supervisory authorities and the introduction of a European passport operating in accordance with the principle of the freedom to provide services.

An institutional approach has been adopted with the aim of achieving a minimal harmonisation, taking account of the variety of ways in which IORPs operate in the various Member States, while providing a high degree of protection by imposing strict prudential criteria as regards the financing of liabilities, the competence and good repute of managers, diversification of assets, and information of supervisory authorities, members and beneficiaries. The proposal also removes all prudential barriers to the cross-border management of pension schemes by IORPs, establishing mutual recognition of national prudential regimes and proposing a system of notification and co-operation between competent authorities.

The Technical Group of the Council of the European Union started discussions concerning the proposal in January 2001. The Council frequently met during the first half of 2002 and fast progress towards adoption was made thanks to the Spain presidency and the priority given to this project.

On 4 June 2002, the Council of Economics and Finance Ministers reached a political agreement on the substance of the proposal for a Directive on institutions for occupational retirement provision. The text of the common position was formally adopted by the Council on 5 November 2002 and transmitted to the European Parliament on 14 November 2002 for second reading.

The text agreed by the Council maintains the core principles of the Commission's proposal while integrating numerous amendments adopted by the Parliament at the first reading in 2001.

- Scope
  Book reserve schemes, where the employer pays benefits directly to the employee from company funds, continue to be excluded as well as Pay-As-You-Go schemes, insurance undertakings, banks and institutions falling under the UCITS Directive. However, the text enables Member States to subject the activities relating to occupational retirement of insurance undertakings to the prudential regime of the Directive on institutions for occupational retirement provision.

- Technical provisions and prudential requirements
  The prudential framework imposes ongoing prudential supervision and requires that the funds hold sufficient assets to cover their commitments. The text agreed upon by the Council recognises the qualitative approach to the calculation of technical provisions proposed by the Commission and introduces two alternative bases for the definition of the maximum interest rate. It requires the Commission to present a report every two years on the development of the situation.

- Cross-border membership
  The proposal establishes a mechanism for co-operation and notification between supervisory authorities of the home Member State (where the pension fund is located) and the host Member State (where the company and the members are located).

- Investment rules
  A qualitative approach to investment rules is proposed. Allocation of assets must be prudent and decided in the light of the liabilities entered into by each fund and not based on a single set of quantitative rules ("prudent person rules"). The Council text confirms the prudent person rules as the main principle and introduces some general qualitative principles that explain what is meant by prudence in asset allocation. It confirms the possibility for Member States to have more detailed requirements at national level, within certain limits. It would also allow host Member States (where the sponsoring company and the members are located) to ask home Member States (where the pension fund is located) to apply certain quantitative rules to the assets corresponding to the pension scheme run on a cross-border basis, provided the host Member State applies the same (or stricter) rules to its own domestic funds.

On 12 March 2003, the European Parliament voted at second reading, adopting thirteen amendments notably aiming to stress the importance of institutions for occupational retirement provision with a view to ensuring financial benefits covering retirement and insisting on the opportuneness of an optional cover of biometric risks. The amendments also provide that the European Commission will examine the opportuneness to extend the optional application of the Directive to activities relating to occupational retirement of other regulated financial institutions. As regards prudential requirements applicable to institutions for the occupational retirement provision, the adopted amendments do not change the provisions of the Council's common position.

Thus, one can well hope that the Council will agree with the text of the Parliament and that the Directive creating a harmonised European framework for IORPs will be adopted in a few weeks' time.

In principle, the Directive on activities and supervision of institutions for occupational retirement provision should be translated into national Law within a time limit of 24 months from the date of its publication in the Official Journal of the European Communities.