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Principles of private pension supervision and their fulfilment in the context of European Integration

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Financial regulation and supervision are some of the most difficult tasks of non-banking financial system and the operators of this sector, not only in Albania but also beyond. Founded in 2006, the Albanian Financial Supervisory Authority (AFSA) is a public institution independent from the executive and responsible for regulating and supervising non-banking financial system operators carrying out their activities in this sector. AFSA will report to Parliament for its activities. The main areas of AFSA activity is the regulation and supervision of:

- The activity of the insurance market and its operators,
- The activity of securities market and its operators.
- The activity of supplementary private pensions market and its operators.
- The non-banking financial activities.[1]

This article consists of a detailed study of the principles that should govern the Financial Supervisory Authority in the framework of supervision of supplementary private pensions market. Pension is considered as a right not only legal but also social. The adequacy of pensions relates to their ability to prevent poverty and social exclusion in old age and to ensure a decent living standard for the retired, that allow them to share in the economic well-being of their country and to participate in public, social and cultural life.

Setting standards in the market through approximation and coordination of the legislation based in international standards and Directives of the European Union are a priority for Albanian Financial Supervisory Authority (AFSA) as well.[2]

With a personal pension you pay regular monthly amounts or a lump sum to the pension provider who will invest it on your behalf. The fund is usually run by financial organisations such as building societies, banks, insurance companies or unit trusts.

Your decision will largely depend on how much you can afford to save for your pension and how much you will get from other pensions.

Personal pensions may be suitable for:

- people who are self-employed
- people who are not working but can afford to pay for a pension
- employees whose employer does not offer a company pension scheme
- employees who have the option to pay into a company pension, but choose not to
- employees on a moderate income who wish to top up the money they would get from a company pension

A personal pension may not be the best choice if:

- your employer offers a company pension scheme
- your employer offers access to a stakeholder pension scheme, with an employer contribution

The rapid development of international financial markets, regulatory and supervisory standards unification and commitment of involved parties in their accomplishment, has influenced AFSA priorities and one of them is to continuously cooperate with counterpart institutions aiming to exchange experiences as well as to participate in international organizations.

The AFSA is a member with full rights in international organizations of regulators for insurance, securities and pension funds. Active participation in these organizations aims the increase in cooperation in order to achieve a more efficient regulation of these markets in international level. This cooperation consists in exchange of information and experience, coordination of attempts to set regulatory and supervisory standards as well as guaranteeing a common assistance in preserving the integrity of non-banking financial markets.[3]

Membership in International Association of Insurance Supervision (IAIS)

The AFSA has been a full right member of the IAIS since 2001. A representative of the AFSA is also a member of the subcommittee of law, regulations and standards of the IAIS. The IAIS was created in 1994 and represents interests of insurance regulators in more than 130 countries worldwide and stands for the main consultant for about 97% of premiums accumulated all over the world. IAIS has 100 observers.

Her involvement in this association has helped in obtaining the most recent information about the legal regulation according to the international standards and their accomplishment. Members of her staff have been part of annual seminars, conferences and meetings of the IAIS where cases regarding regulation and supervision of insurance markets have been discussed.

Membership in International Organization of Securities Commissions (IOSCO)

The AFSA has been a member of IOSCO since 1998 and plays an active part in various structures of this organization. Actually, the AFSA is a member of Emerging Markets Committee and is involved in the European

[1] *www.amf.gov.al*
[2] *E drejta e mbrojtjes shoqerore – Zhaklina Cuci*
[3] *www.amf.gov.al*

Regional Committee. Moreover, the target of the AFSA has been to become a signatory-country in the Multilateral Memorandum of Understanding and Assessment Methodology (MMoU), signed by majority of IOSCO members, which are developed countries. The goal of this agreement is to boost international cooperation, establish the information exchange system in order to achieve an increasingly efficient supervision on the operators and financial services of stock markets in a global view. The AFSA has to convene up to 2010 all legal and regulatory adjustments and become subject to an assessment in order to be qualified to sign MMoU. Therefore, the AFSA faces major responsibilities and challenges concerning revision of the overall legal package of the areas under its jurisdiction.

Membership in International Organization of Pensions Supervisors (IOPS)

Right after its establishment as new regulatory institution, the AFSA determined procedures to become a member of the IOPS and it accomplished its goal by becoming its full member in December 2006. The IOPS is an international organization created in 2004 which represents regulatory entities interests in private pension's areas. Actually IOPS has 60 members and supervisors which embody about 50 countries worldwide.

The IOPS Principles of Private Pension Supervision were first approved in 2006. The objectives of private pension supervision are focused on protecting the interests of pension fund members and beneficiaries, by promoting the stability, security and good governance of pension funds. Pension supervision involves the oversight of pension institutions and the enforcement of and promotion of adherence to compliance with regulation relating to the structure and operation of pension funds and plans, with the goal of promoting a well functioning pensions sector. In addition, achieving stability within the pension sector is an important part of securing the stability of the financial system as whole (as investments made by pension funds have a major impact on the real economy in many countries). Pension supervision should be mindful of financial innovation.

Though pension supervision has many unique aspects, the IOPS recognizes that many pension supervisors work in integrated financial supervisory structures and it is therefore important that these principles are consistent with international principles covering other financial service institutions. The IOPS will therefore consult with other international organisations.

The IOPS Principles for Pension Supervision are designed to cover occupational and personal pension plans and/ or pension funds. Pension supervision includes the monitoring of the activities of pension plans and funds to ensure that they remain within the requirements of the regulatory framework, essentially enforcing compliance with the rules. Pension Supervisory Authorities referred to in the Principles are defined as any entity, responsible in whole or in part for the supervision of pension funds, plans, schemes or arrangements in a country or in the subdivision of a country, whether invested with its own personality or not. The Principles are designed to cover the different types of supervisory structure (specialized, partially integrated and integrated). Pension products also come in many different forms (defined contribution vs. defined benefit, mandatory vs. voluntary etc.) and the pension systems of countries also differ greatly, having been shaped by many factors (from the nature of the state, to the level of economic development, and the pension market structure). The IOPS has taken account of such diversity, and intends that these Principles identify good practice which can be applied universally.

Principle 1: Objectives

National laws should assign clear and explicit objectives to pension supervisory authorities.

The principal strategic objectives of the pension supervisory authority should be clearly and publicly specified. They should include a focus on the protection of pension members and beneficiaries' interests. Objectives should also be directed towards the stability and security of pension funds and plans, the sustainability of the pension sector as a whole, the promotion of good governance and the encouragement of pension provision. The responsibilities of the pension supervisor should be clearly and objectively stated, giving a clear mandate and assigning specific duties.

Principle 2: Independence

Pension supervisory authorities should have operational independence

The pension supervisory authority should have operational independence from both political authorities and commercial interference in the exercise of its functions and powers. To ensure independence, stability and autonomy are particularly required at the senior director level of the pension supervisory authority. The nomination, appointment and removal of the head of the pension supervisory authority should be done via explicit procedures and transparent mechanisms. The head of the authority is usually appointed for a fixed term (normally between 3-6 years) with subsequent reappointment allowed (in order to retain skilled practitioners).

The pension supervisory authority should also be funded in such a way as to ensure independence and there should be a transparent budgetary process. Supervisory acts, including the use of enforcement and sanction powers, should be over-ruled only by judicial decision, including tribunals with relevant powers, or by parliamentary process.

Principle 3: Adequate Resources

Pension supervisory authorities require adequate financial, human and other resources

Pension supervisory authorities should be granted adequate staff and access to resources. The pension supervisory authority should have its own budget sufficient to enable it to conduct proportionate, effective and independent supervision. Funding, in part or in full, of the pension supervisory authority by supervised pension funds or plans could be considered, provided independence is maintained. Where fees are charged, the fee structure should be transparent. The pension supervisory authority should hire, train and maintain sufficient staff with high professional standards and expertise, including appropriate standards of confidentiality and disclosure. The directors, head of the authority and senior management should be suitably qualified, with sufficient education, experience, capacity and reputation.

Principle 4: Adequate Powers
Pension supervisory authorities should be endowed with the necessary investigatory and enforcement powers to fulfill their functions and achieve their objectives
Pension supervisory authorities should be legally empowered to undertake supervision and should be granted adequate powers and the capacity to exercise these powers. The pension supervisory authority should have the power to conduct necessary supervisory functions, according to the nature of the pension system being supervised. Effective supervision of pension funds or plans should focus on legal compliance, financial soundness and control, minimum capital requirements, investment activity, good governance and integrity, actuarial examination, the supervision of pension plan or fund managers, and the provision for adequate disclosure of information to members. Powers should allow for relevant off-site and on-site inspection.
Pension supervisory authorities should have comprehensive investigatory and enforcement powers. The legal framework that defines conditions and circumstances under which the pension fund supervisor must intervene should be flexible enough to enable the pension supervisor to undertake preventative, protective or punitive actions. The pension supervisory authority should have the power to conduct a full investigation when a problem is suspected or observed, obliging funds and other relevant parties (such as asset managers, custodians, auditors) to make documents and information available. Necessary powers include the ability to impose corrective measures and remedial actions if the authority's orders are not carried out. The scope of the powers may extend to the power to impose administrative sanctions such as fines, to direct management, to revoke licences and to refer matters for criminal prosecution. In some cases, powers may include the ability to issue binding regulation.

Principle 5: Risk-based Supervision
Pension supervisory authorities should adopt a risk-based approach.
In order to use their resources efficiently, pension supervisory authorities should adopt a risk based approach, and a suitable risk-assessment methodology should be established. The move towards risk-based supervision can be undertaken gradually, combining this technique with more traditional rules-based supervision as the supervisory authority and pension industry develop the necessary expertise.
A legal framework allowing suitable discretion in terms of interpretation and exercise of supervisory powers is required, which should also provide pension supervisory authorities with the necessary powers to adopt a risk-based approach.

Principle 6: Proportionality and Consistency
Pension supervisory authorities should ensure that investigatory and enforcement requirements are proportional to the risks being mitigated and that their actions are consistent
A logical connection should be made between the results of the risk assessment undertaken by the pension supervisory authority and its actions (for example through the use of a supervisory response matrix).
The remedial actions and if necessary sanctions imposed by the pension supervisory authority should be proportional to the amount of risk posed by the fund to its members and beneficiaries and the pension system as a whole - taking into account the nature, scale, complexity and seriousness of the potential compliance irregularities relating to the relevant party - and should represent the most efficient use of supervisory resources.
The long –term nature of pension funds should be taken in consideration and unnecessary pro-cyclical behaviour should be avoided.

Principle 7: Consultation and Cooperation
Pension supervisory authorities should consult with the bodies they are overseeing and cooperate with other supervisory authorities domestically and internationally
The pension supervisory authority should consult, as appropriate, with the pensions sector when determining its approach to supervision. The pension supervisory authority should be empowered to exchange information with other relevant supervisory authorities, subject to legal and confidentiality requirements. This includes cooperation with other authorities or departments involved in pension supervision (for example conduct of business supervisors) both nationally and internationally (particularly where cross-border pensions are involved), as well as with authorities supervising other relevant financial institutions or markets and law enforcement agencies. Cooperation should be for both efficiency purposes (avoiding overlaps and promoting economies of scale and scope) as well as promoting pro-active preventative measures (e.g. tackling financial crime).

Principle 8: Confidentiality
Pension supervisory authorities should treat confidential information appropriately
The pension supervisor should only release confidential information if permitted by law (with fines or even prison sentences imposed for breaches). Staff should be bound by internal codes of confidentiality, -also after leaving the authority.

IT systems used by supervisors should include limited access restrictions to protect confidentiality and special care should be taken regarding the security of the

supervisory authority's database for reasons of effective data protection.
The supervisory authority should publish its policy on how confidential information will be treated. A suitable balance should be struck between conduct of business supervision (where disclosure can be used to influence the behaviour of the supervised community), prudential supervision (where confidentiality is important to protect the interests of particular supervised entities), and system integrity, according to the nature of the pension system.
The pension supervisor, in regard to non-public information, should, when requested by the providing authority, keep information confidential and maintain appropriate safeguards for the protection of confidential information within its possession.

Principle 9: Transparency

Pension supervisory authorities should conduct their operations in a transparent manner

Pension supervisory authorities should adopt clear, transparent and consistent supervisory processes. The rules and procedures of the pension supervisory authority, and updates thereof, should be published. The pensions supervisory authority should generally operate in a transparent environment and should provide and publish a regular report – at least annually and in a timely manner – on the conduct of its policy, explaining its objectives and describing its performance in pursuing those objectives.

Principle 10: Governance

The supervisory authority should adhere to its own good governance practices – including governance codes, internal risk-management systems and performance measurement - and should be accountable

Supervisory authorities should establish and operate sound governance practices in order to maintain credibility and moral authority to promulgate good practices in the entities under their supervision.
Pension supervisory authorities should be overseen by a governing board of a manageable size. The renumeration of the senior executives of the authority may be published for transparency. The pension supervisory authority should establish and adhere to a governance code, outlining suitable internal controls, checks and balances, and effective processes for risk and performance management. A code of conduct should be established and enforced in relation to all staff members.
An internal audit should be considered good practice for pension supervisory authorities, which reviews the consistency and transparency of the decision making process, the effectiveness of risk management practices and the efficiency and propriety in the use of resource. These internal audits should be carried out as part of the legal and functional oversight of the supervisory authorities and their findings should be presented to the governing board, overseeing (parent) ministry or other statutory authority.
There should be clearly documented procedures for decision-making, with processes for referring decisions up to the appropriate level of seniority, reviewing and documenting decisions. For interventions with serious impact there should be some separation between those within the authority proposing interventions and those taking the final decision, so the scope for emergency action is balanced by a review process.
As part of good governance practices, pension supervisory authorities should monitor their own performance using a range of measures. Pension supervisory authorities should be clearly accountable for their general conduct and activity through accountability arrangements, which will vary according to specific country circumstances and which may include accountability to a range of bodies, from parliament or head of state, Ministry of Finance to the members and beneficiaries of pension funds or plans. Pension supervisory authorities should be subject to an external audit by a state or independent audit institution.
Procedures should be in place for the governing body of a pension plan or fund to appeal to the pension supervisory authority or relevant tribunal for decisions taken by the pension supervisory authority that affect them and which they consider unreasonable or inconsistent with legal provisions. Individual members of staff at the supervisory authority should have indemnity from civil prosecution.

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