EIOPA-MB-11/008
10 January 2011

Decision of the Management Board
on

EIOPA's Rules on
Professional Secrecy and Confidentiality

Having regard to Article 70 of the Regulation (EU) No 1094/2010 of the European Parliament and of the Council establishing the European Insurance and Occupational Pensions Authority (further referred to as "The Regulation" and "EIOPA")[1]

Article 1 – Obligation of professional secrecy

(1) In accordance with Article 70(1) of The Regulation, all Members of the Board of Supervisors and the Management Board, the Executive Director and members of EIOPA's staff, including officials seconded by Member States on a temporary basis and all other persons carrying out tasks for EIOPA on a contractual basis are subject to the requirements of professional secrecy pursuant to:

(a) Article 339 of the Treaty on the Functioning of the European Union; and

(b) the relevant provisions in Union legislation, in particular Union legislation within EIOPA's scope of action.

(2) The requirements in paragraph (1) apply even after the person's duties have ceased as further explained in Article 4 of These Rules.

(3) Individuals may also be subject to national legal requirements which can include criminal penalties.

[1] O.J. L 331, 15.12.2010. p. 48

(4) Annex 1 sets out non-exhaustive extracts of relevant Union professional secrecy duties.

Article 2 – Confidential Material

(1) Confidential Material includes EIOPA's Proceedings, Confidential Information and Confidential Documents, as defined in the following paragraphs:

(a) EIOPA's Proceedings comprises the proceedings of the Board of Supervisors, the Management Board, the Joint Committee and its Sub-Committees, the Board of Appeal, EIOPA's Stakeholders Groups, and all other EIOPA's Committees, Working Groups or Panels;

(b) Confidential Information means all information, facts, data and any other matter which knowledge is acquired directly or indirectly that, whether or not, allows for the identification of individual financial institutions;

(c) Any information obtained from national supervisory authorities that are defined as confidential under their confidentiality rules;

(d) Confidential Documents mean all draft work documents, preparatory information and minutes of meetings, which are not made publicly accessible in accordance to EIOPA Rules on public access of documents;

(e) Personal data as defined in EIOPA Rules on Data Protection.

(2) Personal records and notes related to EIOPA's Proceedings, Confidential Information and Confidential Documents shall also be treated as confidential material.

(3) Information disclosed to national supervisory authorities, as referred to in Article 35 (3) of The Regulation remains subject to the conditions of professional secrecy and confidentiality.

Article 3 – Use and Disclosure of Confidential Material

(1) Persons referred to in Article 1 of these Rules, Article 1 whilst performing their duties, and all other persons participating directly or indirectly in EIOPA must observe absolute confidentiality concerning EIOPA's Confidential Material.

(2) Persons referred to in above-mentioned paragraph 1 must not use (or authorise any person to use) any Confidential Material received

from competent authorities and other public authorities or from financial institutions and other parties except for the purposes of carrying out the duties assigned to EIOPA by The Regulation

(3) In accordance with Article 70(2) and (3) of The Regulation, without prejudice to cases covered by criminal law, any confidential information received by persons referred to in above-mentioned paragraph 1 may not be divulged to any person or authority whatsoever, except:

(a) in summary or aggregate form, such that individual financial institutions cannot be identified;

(b) for the enforcement of the acts referred to in Article 1(2) of The Regulation, and in particular for legal proceedings for the adoption of decisions; and

(c) when exchanging information with national supervisory authorities in accordance with The Regulation and other Union legislation applicable to financial institutions.

(4) Persons referred to in above-mentioned paragraph 1 must not disclose (or authorise any other person to disclose) Confidential Material, even if it is favourable and not adverse to the financial institutions concerned.

(5) Persons referred to in above-mentioned paragraph 1 must take particular discretion and care in casual, social or other contact with third parties, including family and friends, journalists, financial market participants and other people operating in the financial markets.

(6) Where there is doubt about the provision of information, guidance should be sought from EIOPA's legal service.

(7) Members of the Board of Supervisors and the Management Board, the Executive Director and members of EIOPA's staff, including secondees and all other persons carrying out tasks for EIOPA on a contractual basis shall respect the requirements relating to processing of personal data under Regulation (EC) No 45/2001 when handling and disclosing confidential information.

Article 4 – Continuity of confidentiality after EIOPA duties have ceased

(1) Staff leaving EIOPA is free to use the skills acquired in the course of his/her employment at EIOPA as long as such use does not interfere

with his/her obligation of confidentiality and is not detrimental to the public interest, interest of EIOPA or the EU, Member States, and financial institutions.

(2) Article 70(1) of the Regulation applies Article 16 of the Staff Regulations to Members of the Board of Supervisors and the Management Board, officials seconded by Member States on a temporary basis and all other persons carrying out tasks for EIOPA on a contractual basis.

(3) Article 16 of the Staff Regulations allows EIOPA to impose restrictions in employment after members of staff leave EIOPA. Situations will be assessed on a case-by-case basis.

(4) In applying Article 16 of the Staff Regulations and the here-above mentioned provisions, any necessary notifications shall be made to the Executive Director who shall inform the Management Board.

Article 5 – Final provisions

These Rules enters into force immediately.

Done at Frankfurt am Main on 10 January 2011

Flavia Mazzarella

Chairperson of the Management Board Meeting on 10 January 2011

For the Management Board

Annex

Excerpts of legislation applying professional secrecy requirements

Article 339 of the Treaty on the Functioning of the European Union

The members of the institutions of the Union, the members of committees, and the officials and other servants of the Union shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

Article 70

Obligation of professional secrecy.

1. Members of the Board of Supervisors and the Management Board, the Executive Director, and members of the staff of the Authority including officials seconded by Member States on a temporary basis and all other persons carrying out tasks for the Authority on a contractual basis shall be subject to the requirements of professional secrecy pursuant to Article 339 TFEU and the relevant provisions in Union legislation, even after their duties have ceased.

   Article 16 of the Staff Regulations shall apply to them.

   In accordance with the Staff Regulations, the staff shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

   Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence staff members of the Authority in the performance of their tasks.

2. Without prejudice to cases covered by criminal law, any confidential information received by persons referred to in paragraph 1 whilst performing their duties may not be divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual financial institutions cannot be identified.

   Moreover, the obligation under paragraph 1 and the first subparagraph of this paragraph shall not prevent the Authority and the national supervisory authorities from using the information for the enforcement of

the acts referred to in Article 1(2), and in particular for legal procedures for the adoption of decisions. 3.

3. Paragraphs 1 and 2 shall not prevent the Authority from exchanging information with national supervisory authorities in accordance with this Regulation and other Union legislation applicable to financial institutions.

   That information shall be subject to the conditions of professional secrecy referred to in paragraphs 1 and 2. The Authority shall lay down in its internal rules of procedure the practical arrangements for implementing the confidentiality rules referred to in paragraphs 1 and 2. 4.

4. The Authority shall apply Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal Rules of Procedure. (OJ L 317, 3.12.2001, p. 1..)

Article 16 of the Staff Regulations

An official shall, after leaving the service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

Officials intending to engage in an occupational activity, whether gainful or not, within two years of leaving the service shall inform their institution thereof. If that activity is related to the work carried out by the official during the last three years of service and could lead to a conflict with the legitimate interests of the institution, the Appointing Authority may, having regard to the interests of the service, either forbid him from undertaking it or give its approval subject to any conditions it thinks fit. The institution shall, after consulting the Joint Committee, notify its decision within 30 working days of being so informed. If no such notification has been made by the end of that period, this shall be deemed to constitute implicit acceptance.