

# Occupational pensions

## Revision of the Institutions for Occupational Retirement Provision Directive (IORP II)

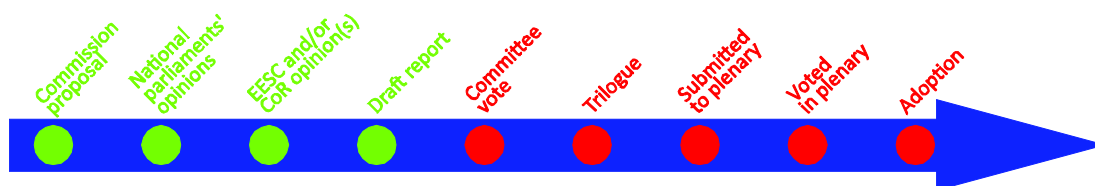
### SUMMARY

In 2014, the European Commission proposed a revision ('IORP II') of the existing Institutions for Occupational Retirement Provision (IORP) Directive of 2003, which covers certain occupational pension savings. These are overwhelmingly in the United Kingdom (55.9% of IORP assets) and the Netherlands (30.7%). The proposed revision aims to improve the governance, risk management, transparency and information provision of IORPs and help increase cross-border IORP activity, strengthening the single market. The proposal did not include new prudential rules (i.e. capital requirements) for IORPs following a long and controversial debate.

Stakeholders have in general welcomed the focus of the proposal and the lack of new prudential rules, but feel the revision is overly detailed and prescriptive and does not respect national competences, nor reflect the variety of IORPs and their position as social (not just financial) entities. The EESC and some national parliaments have made similar comments on the proposal. The Council has agreed on its negotiating mandate, while the ECON Committee is expected to vote on its draft report in early 2016.

### Proposal for a Directive of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision (recast)

<i>Committee responsible:</i>	Economic and Monetary Affairs (ECON)	COM(2014) 0167 of 27.03.2014
<i>Rapporteur:</i>	Brian Hayes (EPP, Ireland)	<i>procedure ref.:</i> 2014/0091(COD)
<i>Next steps expected:</i>	Vote in Committee, January 2016	Ordinary legislative procedure



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## Introduction

Occupational pensions are private, normally pre-funded, supplementary pension plans linked to an employment relationship. Many (but not all) occupational pensions are regulated at EU level by the [Directive](#) on Institutions for Occupational Retirement Provision (or 'IORPs'). On 27 March 2014, the European Commission [proposed a revision](#) (IORP II) of the current IORP Directive. The Commission noted there had been significant developments since the original legislation in 2003 and that the proposal would make occupational pension institutions better governed, more transparent and increase their cross-border<sup>1</sup> activity, strengthening the internal market.

According to a [memo](#) published alongside the proposal, the Commission had three reasons for revising the existing Directive:

- The financial crisis had shown the need to strengthen governance and ensure clear information to pension scheme members and beneficiaries,<sup>2</sup> in particular against the backdrop of a growing move away from IORPs with guaranteed retirement pay-outs (known as 'defined benefit') towards pension schemes where the investment risk is borne by the member ('defined contribution');
- The need for more retirement savings and strong occupational pensions systems, given ageing populations; and
- The importance of long-term investment for Europe's economy, and occupational pension schemes' key role as institutional investors.

The Commission's [executive summary](#) of the impact assessment identified five issues to address: prudential barriers which make it more expensive for employers to join an IORP in other Member States; increasing reliance on defined-contribution schemes, which shifts risks from IORPs and employers to individuals; improving current minimum levels of protection for scheme members and beneficiaries in the light of the financial and economic crises; provision of comprehensible essential information so people can make informed decisions about their retirement financing; and enhancing supervisory powers to ensure that IORPs comply with governance and transparency requirements.

## Context

Europe's population is ageing, and we are moving from having around four people of working age (15-64) for every person aged over 65 years, to just two by 2060. This has put increased pressure on pension systems and led to reforms to make them more sustainable for the future. As a result, pay-as-you-go (PAYG)<sup>3</sup> public pensions are, in general, expected to become less generous in future. Hence there have been calls for more opportunities for citizens to be able to save in safe and good value funded<sup>4</sup> (i.e. pre-funded) pensions. The collective and not-for-profit nature of occupational pensions and the involvement of social partners may make them a good option for

pension saving, with potential opportunities to share risks between pension scheme members, and to deliver lower costs per member from economies of scale.<sup>5</sup>

IORPs hold assets worth €2.5 trillion on behalf of around 75 million Europeans, which represents 20% of the EU's working-age population.<sup>6</sup> However, [occupational pensions](#) are currently only important in a few Member States. Those occupational pension savings regulated by the IORP Directive are mostly found in just two countries – the United Kingdom (55.9% of IORP assets) and the Netherlands (30.7%).<sup>7</sup> Around a further 10% of IORP assets are in Germany (4.5%), Italy (2.8%) and Ireland (2.4%).

### Existing situation

In general, there is only limited EU-level competence in the field of pensions, with matters largely for the Member States. However, the existing IORP Directive covers some occupational pensions.<sup>8</sup> This 2003 legislation aimed to provide the conditions under which a single market for occupational pension services could develop. However, in 2014 just 75 IORPs were actually providing cross-border services. The Directive sets out some basic requirements for IORPs, together with some rules for their supervision. More detailed national rules sit within this EU legal framework, reflecting differences in national situations, social and labour law. Key elements of the IORP Directive include:

- The scope, which broadly excludes social security pension schemes (whether PAYG or funded), those activities based on direct insurance, life insurance (unless Member States choose that this be covered by parts of the IORP Directive), collective investments, credit or securities investments, which are all covered by other legislation. Pension schemes operating on a PAYG basis and [book reserve](#) pension schemes are also excluded. IORPs with fewer than 100 members can also be excluded. (Articles 2–5);
- The ring-fencing of IORPs from any wider business of the institution, and the legal separation of the IORP from any sponsoring employer (Articles 7 and 8);
- Registration of IORPs, ensuring they are run by people of good repute with access to the right skills, and that pension-scheme members are sufficiently informed about the rules, rights, obligations and risks of the scheme. Also that certification of technical provisions<sup>9</sup> is done by actuaries or other appropriate persons, and that IORPs operating cross-border are subject to prior authorisation by the home Member State (Article 9);
- Requirements for annual reports and accounts (Article 10);
- Information provision to members and beneficiaries (Article 11);
- Preparation of statements of investment principles every three years, including investment risks, management of them and asset allocations (Article 12);
- Provision of information by IORPs to the competent national authorities and ensuring these authorities have appropriate powers to oversee IORPs to safeguard the interests of members and beneficiaries (Articles 13-14);
- Establishing appropriate technical provisions (i.e. calculating the liabilities of the IORP) by an actuary or other specialist based on prudent assumptions every year, or every three years with annual adjustments (Article 15);
- Requiring that IORPs have sufficient funding to cover the technical provisions or, where this is not the case, to adopt a recovery plan in order to do so. In the case of cross-border activity full funding is required at all times (Article 16);
- Requirement for IORPs that provide guarantees themselves to hold buffer funds above the technical provisions (Article 17);

- Requiring IORPs to invest their assets prudently (the so-called 'prudent person' rule) and in the best interest of members and beneficiaries, and follow some more specific rules, such as a limit of 5% of the portfolio in investments in the sponsoring undertaking and a ban on borrowing (Article 18);
- Not restricting IORPs from using management or custody services established in other Member States (Article 19); and
- Cross-border rules, including that IORPs wishing to operate cross-border obtain prior authorisation from the authorities where they are based and that the authorities where the sponsoring undertaking is based are notified and hence can ensure compliance with the relevant social and labour law requirements (Article 20).

### The changes the proposal would bring

According to the Commission's [memo](#), the 81-article proposal has **four key objectives** and introduces measures to achieve them as set out below.

**(1) Ensure the soundness of occupational pensions and better protect pension scheme members and beneficiaries**, by means of: (i) **New governance requirements** on key functions (risk management, internal audit and, where relevant, actuarial function); (ii) **New provisions on remuneration policy**, for instance on avoiding conflicts of interest and regularly disclosing relevant information on the policy; (iii) **Self-assessment of the risk-management system** (through a Risk Evaluation for Pensions); (iv) **A requirement to use a depositary** (an entity in charge of the safe-keeping and oversight of members and beneficiaries' assets); and (v) **Enhanced powers for supervisors** including for chain-outsourcing (ensuring appropriate oversight is maintained of any activities outsourced by IORPs and any subsequent re-outsourcing) and stress testing.

**(2) Better inform pension-scheme members and beneficiaries**, by introducing a **standardised Pension Benefit Statement at EU level** that provides pension scheme members with simple and clear information about their individual pension entitlements.

**(3) Remove obstacles for cross-border provision of services**, by making it **easier to operate a pension scheme subject to the social and labour law of another Member State** and for fund assets to be transferred across Member States, notably by **introducing a pension-fund transfer procedure**.

**(4) Encourage occupational pension funds to invest long term in growth, environment and employment-enhancing economic activities**, by **modernising investment rules** to allow IORPs to invest in long-term financial assets, changing provisions on investment restrictions to make sure IORPs can invest in infrastructure, unrated loans, etc.

Notably, **the proposal did not include provisions for a new harmonised solvency standard for IORPs** which had been a long-standing and controversial part of earlier deliberations but was [ultimately dropped](#) from IORP II.

The benefits of these changes are considered to include: greater financial stability (given the very large scale of some IORPs); opportunities for cost savings for multi-national companies through easier consolidation of existing pension schemes in different Member States; reduced fiscal pressure on Member States' PAYG public pension systems through better and more widespread IORPs supporting retirement income; and safer IORPs for citizens and better information on their IORP pension

rights, including for mobile workers, allowing them to make better-informed decisions on their retirement planning.

### Preparation of the proposal

The proposed revision of the existing IORP Directive has had a long gestation with a [number of key steps](#). More recent ones included:

- April 2009, [Report](#) by the Commission, as required by the IORP Directive, on the following aspects: rules on the calculation of technical provisions; the application of investment rules; progress in adapting national supervisory systems; and cross-border custodianship. The report concluded that there was no immediate need for legislative changes on these aspects at that time.
- May 2009, [public hearing](#) on the harmonisation of solvency rules applicable to (certain<sup>10</sup>) IORPs, following an earlier (September 2008) Commission [public consultation](#). Although considered for inclusion at an earlier stage, IORPs were ultimately excluded from the provisions of the 2009 [Solvency II Directive](#) which set solvency rules for insurance companies. The Solvency II Directive recitals<sup>11</sup> noted the review of the IORP Directive would consider IORP solvency standards.
- July 2010, pensions [Green Paper](#) included a consultation question on how the IORP Directive should be revised. The responses were published together with [a full summary<sup>12</sup> and shorter report](#). According to the report, 'Most respondents were in favour of reviewing the IORP Directive in order to clarify legal uncertainties related to cross-border activity and offered suggestions for how this could be done.' The February 2012 [White Paper](#) on pensions confirmed the IORP Directive would be revised, saying 'The aim of the review is to maintain a level playing field with Solvency II [i.e. insurance regulations] and promote more cross-border activity in this field and to help improve overall pension provision in the EU.'
- March 2011, [call for advice](#) from the European Insurance and Occupational Pensions Authority ([EIOPA](#)) sought advice on how to improve the IORP Directive. This covered: the scope of the IORP Directive; cross-border aspects; capital requirements (i.e. prudential rules) and their measurement; governance and supervision requirements; and information for IORP members and beneficiaries.
- In February 2012, EIOPA gave its [advice](#) on the review of the IORP Directive. It noted the remit was set by the Commission. Within this and based also on its consultations, it highlighted some key issues raised, including: proportionality (including keeping the fewer than 100 members exemption); concerns that the review was not needed; that greater harmonisation of prudential standards is technically possible, but there were strong views (both for and against) on the need for this from stakeholders; that defined-contribution schemes varied; noting the differences between IORPs and insurance undertakings and hence the need to reflect this in the legislative framework; and the importance of a thorough impact assessment and EIOPAs' input to this.
- The Commission held a [public hearing](#) in March 2012 on revising the IORP Directive.
- In October 2012, the Commission asked EIOPA to carry out a [Quantitative Impact Study](#) (QIS) for IORPs to assist with the Impact Assessment for a revised

IORP proposal. This QIS focussed on defined-benefit pensions and testing an approach to prudential standards (the so-called 'holistic balance sheet') that sought to make them comparable and transparent across Europe.

- In May 2013, the [Commission announced](#) that new solvency standards for IORPs would not form part of the forthcoming IORP II proposal, which would focus on governance, transparency and reporting requirements for IORPs.
- In July 2013, EIOPA presented the [final report on the QIS](#) to the Commission.
- In July 2013, to assist with the Impact Assessment, at the request of the Commission which provided questionnaires and guidance, [PensionsEurope](#) gave some [input](#) on the administrative burden of possible governance, risk, supervision, disclosure and transparency proposals, based on a member survey.
- In September 2013, the Commission's Impact Assessment Board (IAB) gave a [negative opinion](#) on the draft impact assessment on IORP.
- In October 2013, the Commission's IAB once again gave a [negative opinion](#) on the (revised following the earlier negative opinion) draft impact assessment on IORP. The IAB asked for: better evidence of the problem; a better explanation of why EU action was needed now and why national action could not suffice; and for the issue of the proportionality of the measures to be critically addressed.
- In March 2014, the Commission presented its [proposal](#) and [impact assessment](#)<sup>13</sup> ([summary](#)) for a revised IORP Directive.

### Parliament's starting position

In its 2011 [resolution](#) on the Commission's Green Paper, Parliament agreed with the aim of ensuring high security for future pensioners, consistent with reasonable costs. It called for the Commission to carry out an impact assessment before revising the IORP Directive and to recognise the trend to more defined-contribution and fewer defined-benefit pensions, and stressed the importance of EIOPA in the preparations leading to the review. The resolution considered that efforts to improve governance, risk management, transparency and information for IORPs could take as a starting point the requirements in these areas in the Solvency II standard for insurance companies. However, regarding any new prudential rules (i.e. capital requirements) for IORPs, it noted that risks in the insurance sector are different to those faced by IORPs and that any proposals in this area needed a full assessment of the costs.

In its 2013 [resolution](#) in response to the White Paper, the European Parliament made a number of points regarding the review of the IORP Directive, with the aim of creating an environment that stimulates further national and internal market progress in this field. These points included the importance of robust prudential regulation and enhanced protection for current and future pensioners, respecting the diversity of existing pensions and national choices. The resolution also stressed the importance of thorough impact analysis to achieve the right cost-benefit balance, ensuring proportionate and robust regulation of IORPs. This should include active dialogue with social partners and respect for their existing pension agreements, national specificities and the long-term nature of pension funds.

The resolution was against the inclusion of Europe-wide solvency standards for IORPs, and in particular the direct application of the Solvency II (insurance) funding standard to IORPs given the differences between insurance undertakings and IORPs. The resolution



called for proposals to strengthen corporate governance and risk management, together with requirements for greater transparency and disclosure of information.

### Stakeholders' views

A large number of stakeholders at EU and national level engaged in the debates and formal consultations during the development of IORP II. Brief summaries of the formal positions of key players are below.

The **ETUC's** 2014 [position paper](#) on the Commission's proposal welcomed the aims and much of the approach taken, e.g. safeguarding future pension promises and improving transparency and governance. However, it pointed out the need to balance risks, returns and costs. The ETUC felt the aim should be to secure decent incomes in retirement, rather than focus on creating a single market for IORPs. They noted IORPs operate in a social and labour law context with social partner engagement and that they do not normally sell their services in an open market. The ETUC also raised concerns about costs to IORPs and members, and the limited evidence to quantify the claimed benefits.

More **specific comments** included: **on governance**, the educational and professional requirements for IORP management boards should apply collectively, rather than to individuals, given the importance of lay members and social partner representatives<sup>14</sup> in representing pension-scheme members' interests on boards. Remuneration was a matter for social partners and the proposal should not cut across their rights to conclude collective agreements; **on risk management**, that IORPs should have procedures for employees and consultants to raise concerns internally; **on information**, the proposed pension benefit statement should not mandate inclusion of forecast amounts as these could be misleading. Information should be provided in electronic and paper form; **on cross-border** IORPs, these were not necessary given the national tax, social and labour law context, but should be allowed if social partners wish.

**BusinessEurope's** 2014 [position paper](#) noted the importance of cost-effective IORPs for future pension provision. BusinessEurope highlighted the social (not purely financial) nature of IORPs and the role of the social partners. Whilst agreeing on the principles of effective risk management, transparency and good governance of IORPs, it felt the proposed measures were too detailed and prescriptive given the diversity of IORPs, and did not respect subsidiarity. Delegated acts could lead to further unwelcome detailed prescription. BusinessEurope felt the overall aim should be promoting IORPs, whereas some of the proposals would restrict progress and add excessive costs. However, the exclusion from the proposals of new capital requirements for IORPs was welcomed.

**Specific points** included: **on governance**, the proposals could hinder the existing role of social partners, e.g. on setting remuneration policy, the use of lay trustees, and employers administering the pension scheme. Measures would add significant costs which were not properly calculated in the impact assessment, whilst the requirements for IORPs to appoint a single depositary could limit investments and duplicate existing protections; **on risk management**, proposals needed to be proportionate to scheme size, and delegated acts could add further inappropriate detail which, combined with the risk evaluation report process, could lead to de facto new solvency requirements akin to Solvency II. This would damage IORP provision by adding very significant and inappropriate costs; **on information**, only minimum requirements should be set, given the need for adaptations for national circumstances. The proposed pension benefit

statement was overly prescriptive, costly, complicated, did not follow best practice and treated IORPs as retail financial products rather than social institutions; **on cross-border** IORPs, they supported greater legal clarity and reduced burdens, but were disappointed the requirement for cross-border IORPs to be fully-funded at all times<sup>15</sup> remained.

The 2014 [position paper](#) of **PensionsEurope** (who represent occupational pension schemes at EU level) welcomed the focus on governance and communications and the lack of new capital requirements, but were concerned about unnecessary extra costs, and felt the impact assessment was insufficiently rigorous. IORPs were social institutions involving the social partners, operating in the context of national social and labour law, not consumer financial products. The revision ought to be high level and principles based, with flexibility reflecting the diversity of IORPs. Delegated acts should not be used. Improved investment rules, including for long-term instruments, were welcomed.

PensionsEurope made a number of detailed comments on the articles. Some of these specific points included: **On governance**, the social partners' role in negotiating and managing IORPs must be respected, and 'copy-paste' of legislation covering the financial and insurance sector avoided. Rules need to be flexible as IORPs are part of wider national pension systems. The educational and professional requirements for IORP management boards should apply collectively. Conflict of interest rules should be set nationally. Mandating the use of a depositary should be decided at national level, to avoid expensive duplication (i.e. effectively having two depositories). Prudential supervision provisions should not lead to marginalising or undermining national social and labour laws; **on risk management**, the risk evaluation report should be set out in more detail to avoid this being extended into becoming new capital requirements; **on information** the proposals were inappropriate, being copied from those for financial products, and did not take account of IORPs as social institutions and wider national situations. On the pension benefit statement, PensionsEurope wanted to see a flexible best-practice approach to reflect the specific type of pension; **on cross-border**, transfers should get the approval of the sponsoring undertaking and the IORP board, national information requirements should be met, and they wanted the 'full-funding at all times' requirement for cross-border IORPs to be dropped.

**InsuranceEurope** (representing insurance companies at EU level) [commented](#) in 2014, welcoming the main objectives of the proposal, but felt the omission of new capital requirements from the proposal meant IORP members '...may not consistently benefit from the highest standards of protection.' InsuranceEurope pointed out that both insurance companies and IORPs provide occupational pensions, but they are subject to different regulatory frameworks at EU level.

More specific comments included: **on information**, that provisions for information should be outcome-focussed, with the exact details, form and method left to Member States to give flexibility for different situations. Information should be concise and relevant to avoid disengagement by members. Pre-joining information should allow for comparisons between any options available, including differences between providers and products, and details on risks and security mechanisms. At retirement, information on the different pay-out options (if any) should be provided. Likewise for those changing employment, information on any options regarding built-up IORP rights when leaving the company should be provided; **on governance**, the proposals were in general welcomed, though should be applied proportionately. For example, an IORP



management board's skills and experience could be considered collectively according to the situation (e.g. scale, a person's duties, etc.). The requirement for a single depositary should only be applied where the benefits outweighed the costs to pension-scheme members. **On reinsurance**, InsuranceEurope noted the Solvency II Directive covering insurers seemingly prevented reinsurers from providing cover to IORPs directly. They called for an amendment to the IORP II proposal to allow reinsurance to continue for IORPs currently utilising it, given it can help some IORPs manage risk.

### Advisory committees

The European Economic and Social Committee (EESC) gave its [opinion](#) on the proposal in July 2014. The EESC supported most of the elements proposed, and stressed the important role IORPs can play in providing additional pension provision. However, it disagreed with viewing IORPs as purely financial institutions, noting IORPs' social function, the key role played by the social partners in establishing and managing them and the context of national social and labour law in which IORPs operate. Given the variations in national pension systems and IORPs, far-reaching standardisation was inappropriate and could be costly. The EESC opposed the proposed detailed pension benefit statement as this would be unable to set out the appropriate information for every different circumstance. Whilst the EESC supported a greater role for IORPs in long term investments, it was against the Commission's proposal to ease IORPs' ability to invest in investment instruments not traded on regulated markets.

### Council

Council negotiations began in a Council working party in May 2014 under the Greek Presidency and continued under the subsequent Italian Presidency, with eight working group meetings held in total. A [first Presidency compromise](#) was tabled in September. Further working group meetings led to [second](#) and [third Presidency compromise](#) texts in October and early November. A [fourth Presidency compromise](#) was tabled in late November. In December 2014, the Permanent Representatives Committee, on behalf of the Council, agreed its [negotiating mandate](#) on the proposed directive, based on the fourth Presidency compromise, with a view to reaching an agreement in trilogue at first reading.

The Council's agreed negotiating mandate made a number of significant changes to the original Commission proposals. In general, these changes aim for less prescriptive and less detailed rules at EU level, giving more flexibility to accommodate national situations, and include removal from the proposal of powers for the Commission to make delegated acts and for EIOPA to set out guidelines. Some more specific points include: on **governance**, requirements for the skills and experience of those managing IORPs to be considered collectively as a board (rather than individually). Remuneration policy and disclosure rules were made less burdensome. The mandatory use of a depositary was only to be required where equivalent protections do not already exist; on **risk management**, taking a more high level principles-based approach on the proposed risk evaluation for pensions report, with detailed rules left to national authorities (not EIOPA) to set; on **information**, more flexible and much less detailed rules for the pension benefit statement, including on its format and issuance. Pension projections remain a requirement, but these do not necessarily have to form part of the benefit statement itself; on **cross-border**, a number of clarifications are made to the regulatory framework for cross-border activities and transfers of IORPs. In the end, full funding at all times for IORPs operating cross-border (as per the Commission proposal)

was retained, although earlier in the Council discussions, compromise text was tabled requiring full funding only at the point of an IORP going cross-border; on **reinsurance**, inclusion of a definition of reinsurance (amending the Solvency II Directive [2009/138/EC](#)) to enable IORPs to be reinsured.

### National parliaments

In 2014, both **UK Houses of Parliament** (the [House of Commons' European Scrutiny Committee](#) and [House of Lords' European Union Committee](#)) wrote expressing concerns about the IORP II proposal's respect for the principle of subsidiarity. These were taken forward in the context of political dialogue, rather than formal reasoned opinions under the so-called '[yellow card](#)' procedure. Issues cited included the limited number of Member States with significant IORPs and the perceived shortcomings of the Commission's impact assessment. The Commission replied to the House of Commons in [June](#) 2015 and the House of Lords in [July](#) and [September](#) 2015.

The [German Bundesrat](#) was content that no new capital requirements for IORPs were included, and was keen that national social and labour law be respected, with sufficient flexibility in the final IORP II rules for different national situations. They were critical about the inclusion of delegated acts, but were in favour of efforts to ensure better governance and information. The German **Bundestag** considered IORP II in the relevant committees and no reasoned opinion on the principle of subsidiarity was issued.

The **Dutch Parliament's** 2de Kamer gave a reasoned opinion (i.e. raised formal subsidiarity concerns under the 'yellow card' procedure) on the IORP II Directive on [15 May 2014](#) and the Commission [replied in July](#). In [June 2014](#), the Dutch Parliament asked the Dutch Secretary of State to report regularly on the status of the negotiations in the Council and to undertake to give them the opportunity to evaluate the Council's draft mandate before the Council's final decision-making step.

### Parliamentary analysis

The Ex-Ante Impact Assessment Unit of the European Parliamentary Research Service (EPRS) gave its [initial appraisal](#) of the Commission's impact assessment on the IORP II proposal in September 2014. It noted that the impact assessment was based on a wealth of sources and consultation and described some genuine problems in line with the Parliament's 2013 resolution on the Commission's pensions White Paper. However, it felt there was a lack of evidence presented in some areas, and that the framing and analysis of the options was rather artificial. Subsidiarity concerns had been raised by the two Member States with the most developed IORPs. It pointed out the lack of a positive opinion on the impact assessment from the Commission's own Impact Assessment Board, despite an internal Commission rule that such an opinion is, in principle, necessary before adoption of a proposal. A general briefing on EU [occupational pensions](#) (not just IORPs) and their prospects has also been prepared by EPRS.

### Legislative process

The Economic and Monetary Affairs Committee (ECON) is responsible and Brian Hayes (EPP, Ireland) was appointed rapporteur. Two committees gave their opinions: Women's Rights and Gender Equality (FEMM), rapporteur Sirpa Pietikäinen (EPP, Finland); and Employment and Social Affairs (EMPL), rapporteur Jeroen Lenaers (EPP, the Netherlands).

**FEMM** adopted its [opinion](#) on 6 May 2015 (25 votes for, 6 against and 0 abstentions) calling on ECON to take into account 27 amendments proposed by FEMM. These included highlighting the social function of IORPs, the situation of women including the gender pension gap, and the need for gender mainstreaming in pension scheme **governance**. **Information** should also be tailored, including for gender and age.

**EMPL** adopted its [opinion](#) on 23 June 2015 (38 votes for, 10 against and 2 abstentions) calling on ECON to take into account 48 amendments proposed by EMPL which: highlighted the social purpose of IORPs and the need for flexibility in IORP II, reflecting the variety of IORPs, national situations and social and labour law; stressed that new EU-level solvency standards (capital requirements) should not be developed; introduced **cross-border** information rules and rules on transfers which allowed for stronger requirements whilst the need for full funding at all times was dropped; dropped provisions for **delegated acts**; and streamlined **Information** requirements.

On 3 September 2015, the Committee on Legal Affairs (**JURI**) gave its positive<sup>16</sup> opinion on using the recast technique, rapporteur Pavel Svoboda (EPP, Czech Republic).

ECON held an open hearing on IORP II on 26 May 2015. The **ECON rapporteur** presented his [draft report](#) on 28 July 2015, proposing 266 amendments to the Commission's proposal of which 2 are aligned with the FEMM opinion and 13 with the EMPL opinion. The rapporteur considered the IORP II directive to be one based on minimum harmonisation and hence it should be flexible and not cut across issues of national social and labour law. A key goal should be removing obstacles to cross-border activity, to improve the functioning of the internal market. Specific elements included: **on cross-border**, clarifications and a clear definition of cross-border activity to provide certainty for IORPs wishing to operate cross-border. Changing the requirement for cross-border IORPs to have full funding of their technical provisions at all times to a requirement for full funding at the moment when a new or additional scheme starts operating, including in those cases not involving cross-border activity. Transfer rules should also be set for transfers within Member States, rather than just for cross-border transfers as the Commission proposed; **on information**, replacing the highly prescriptive rules for the pension benefit statement proposed by the Commission with a list of guiding principles to provide key relevant information to IORP members; **on delegated acts** to remove these powers from the proposal along with the ability of EIOPA to adopt guidelines or recommendations in the context of the Directive; and **on reinsurance**, allowing for reinsurance of IORPs within the scope of the proposed directive.

Discussions were held in the ECON Committee on 15 September. In early October 2015, [amendments 267-434](#) and [amendments 435-737](#) were published. Some themes in these amendments include: the social purpose of IORPs; avoiding new capital requirements; subsidiarity and proportionality; the 'full funding at all times' rule and when and to what IORPs this should apply; collective assessment of IORP management boards' skills and experience; transparency of investments and environmental, social and governance issues; risk evaluations and what they cover and whether delegated acts remain; need for a depository; more principle-based information requirements; and timing of review of the Directive. On 10 November 2015, IORP II was again discussed in ECON. The draft report is scheduled for a vote in ECON committee on the 25 January 2016. If agreed in Committee, trilogues could start in February 2016 on the basis of the final report.

## References

[Activities and supervision of institutions for occupational retirement provision \(Recast\)](#), European Parliament, Legislative Observatory (OEIL).

Initial Appraisal of a European Commission Impact Assessment – [Activities and supervision of institutions for occupational retirement provision](#), Claudio Collovà, EPRS, PE 528.800.

## Endnotes

- <sup>1</sup> Broadly, IORPs with a sponsoring employer in another Member State. More information on cross-border activity is available from EIOPA's [2014 Report on Cross Border IORP Market Developments](#)
- <sup>2</sup> Pension-scheme members and beneficiaries are not synonymous. For instance, the spouse of a pension-scheme member may benefit from a widow's or widower's pension on the death of the pension-scheme member.
- <sup>3</sup> Revenue from current contributions used directly to pay for current retirement benefits, so they are not pre-funded, barring, in some cases, small reserve funds. Most public pension schemes are PAYG.
- <sup>4</sup> Pensions in which contributions are invested over time and then used to pay pension benefits in the future.
- <sup>5</sup> e.g. 'Privately managed funded pension provision and their contribution to adequate and sustainable pensions', page 29, Social Protection Committee, 2008, speaks about the potential advantages of such schemes.
- <sup>6</sup> According to the Commission's [memo](#).
- <sup>7</sup> According to EIOPA's [Financial Stability Report May 2015](#) page 40.
- <sup>8</sup> There are over 125 000 IORPs, according to the [impact assessment](#) for the IORP II proposal. Note, however, that many of these will be smaller schemes with fewer than 100 members and so potentially exempt from the Directive.
- <sup>9</sup> Broadly speaking, the funds needed to meet liabilities based on certain actuarial assumptions and calculations.
- <sup>10</sup> Those falling under Article 17(1) of the IORP Directive.
- <sup>11</sup> The Solvency II Directive recital 138 notes 'The Commission...should develop a proper system of solvency rules concerning IORPs, whilst fully reflecting the essential distinctiveness of insurance and, therefore, should not prejudice the application of this Directive [i.e. the Solvency II Directive] to be imposed upon those institutions.'
- <sup>12</sup> See page 10 of the summary of responses to the various points raised.
- <sup>13</sup> The impact assessment did not ultimately obtain a positive assessment from the Impact Assessment Board, but the proposal was nonetheless made.
- <sup>14</sup> Social partner representatives or other lay members (i.e. not professional pension managers) help represent the interests of pension-scheme members and beneficiaries on some IORP management boards.
- <sup>15</sup> Under the existing IORP Directive, IORPs are required to be fully funded at all times, although limited periods where technical provisions (i.e. liabilities) are higher than assets are permitted (with recovery plans) under certain conditions. However, IORPs operating cross-border must be fully funded at all times, without any exception.
- <sup>16</sup> By 18 votes in favour and 3 abstentions, JURI decided to recommend that ECON, as the committee responsible, proceed to examine the IORP II proposal in accordance with Rule 104.

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