

# Occupational pensions

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

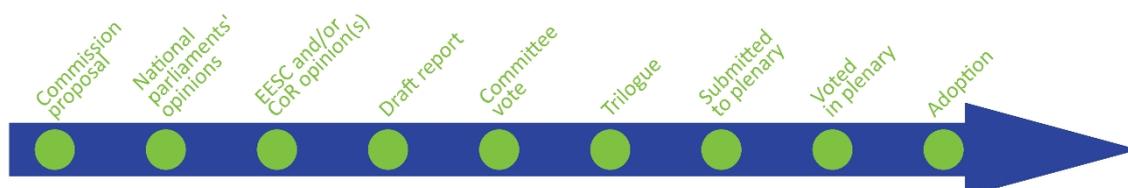
### SUMMARY

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.

Stakeholders generally welcomed the focus of the proposal and the lack of new prudential rules, but felt the revision was overly detailed and prescriptive and did not respect national competences, nor reflect the variety of IORPs and their position as social (not just financial) entities. Following trilogue discussions, the compromise text was adopted at first reading in the European Parliament's plenary on 24 November, and then adopted by the Council on 8 December. It came into effect on 12 January 2017 and Member States have two years from then to transpose it into national law.

### 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) 167 of 27.3.2014
<i>Rapporteur:</i>	Brian Hayes (EPP, Ireland)	<i>procedure ref.:</i> 2014/0091(COD)
<i>Procedure completed</i>	Directive (EU) 2016/2341 <a href="#">OJ L 354, 23.12.2016, p. 37</a>	Ordinary legislative procedure



This briefing updates an earlier edition, from September 2016: [PE 589.800](#).

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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 'IORP'). 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.

## 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>2</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>3</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>4</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>5</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>6</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>7</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. These cover such things as the ring-fencing of assets, information provision, regularly calculating levels of funding needed and setting plans to address any shortfall, prudent investment of assets, rules for operating cross-border, etc. More detailed national rules sit within this EU legal framework, reflecting differences in national situations, social and labour law.

More detailed information on the content of the 2003 legislation is found in earlier versions of this briefing.

### 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,**<sup>8</sup> 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 (see previous edition of the briefing for more) included:

- July 2010, Commission's 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>9</sup> and shorter report](#) which said: 'Most respondents

were in favour of reviewing the IORP Directive...’ The subsequent [White Paper](#) in February 2012 confirmed the IORP Directive would be revised.

- March 2011, [call for advice](#) from the European Insurance and Occupational Pensions Authority (EIOPA) sought advice on how to improve the IORP Directive with EIOPA giving its [advice](#) in February 2012 on the review of the IORP Directive following the Commission remit. 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’). EIOPA presented the [final report on the QIS](#) to the Commission In July 2013.
- 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, 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 draft impact assessment on IORP.
- In March 2014, the Commission presented its [proposal](#) and [impact assessment](#)<sup>10</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.

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. 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.

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 are not products on the 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>11</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, the use of lay trustees, and employers administering the pension scheme. Measures would add significant costs, 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 they were concerned the risk evaluation report process could lead to de facto new solvency requirements akin to Solvency II which 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 and to reflect that IORPs were 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>12</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.

PensionsEurope made a number of detailed comments on the articles, including: **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 depositary use should be decided at national level, to avoid effectively having two depositories. Prudential supervision provisions should not undermine 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. A flexible best-practice approach should be taken on the pension benefit statement; **on cross-border**, transfers should get the approval of the sponsoring undertaking and the IORP board, national information requirements should be met, and the 'full-funding at all times' requirement for cross-border IORPs should 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. 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 (e.g. an IORP management board's skills and experience could be considered collectively). A single depositary should only be required 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 and called for an amendment to the IORP II proposal to allow reinsurance to continue.

### 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 supporting retirement income. It noted IORPs' social function, operating within national social and labour law, and the social partners' role in establishing and managing them. Hence the EESC disagreed with viewing IORPs as purely financial institutions. Far-reaching standardisation was costly and inappropriate given

national differences. The EESC opposed the overly prescriptive pension benefit statement. 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 aims for less prescriptive and less detailed rules at EU level, giving more flexibility to accommodate national situations, and includes the 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. 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 higher 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. 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 (not as 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 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>13</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 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 with a list of guiding principles to provide key relevant information to IORP members; **on delegated acts** to remove these powers along with the ability of EIOPA to adopt guidelines or recommendations based on 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 [report](#) was voted on in the ECON Committee on 25 January 2016 and approved (47 votes for, 3 against and 7 abstentions). At the same meeting, the Committee also [decided to open inter-institutional negotiations](#) on the basis of this adopted report. The ECON report differs in certain respects from both the original proposal of the European Commission and the negotiating mandate agreed by the Council, including:

- As with the Council text, removing the provisions for delegated acts;
- Ensuring intergenerational balance of risks and benefits in IORPs [something not covered by the Commission or Council texts. Articles 20, 29, 60];
- Taking account of environment, social, governance and ethical factors (often called 'ESG' for short) when IORPs make and review investment decisions and set investment policies, including involving relevant stakeholders [something not covered by Commission or Council texts. Articles 20, 22, 26 and 32];
- Where a cross-border transfer of an IORP which offers a guarantee is proposed, the home Member State (i.e. where the IORP is to be transferred *from*) can ask EIOPA to make an assessment of (i) whether the transfer could cause any systemic risk to the EU financial system and (ii) whether the long-term interests of members and beneficiaries would be negatively affected [something not covered by Commission or Council texts. A new article - 3a - is proposed to achieve this];
- Allowing small institutions with required funding levels (so-called technical provisions) not exceeding €25m to benefit from exemptions to rules in the same way that schemes of fewer than 100 members can [Article 5];
- Some differences in definitions including those relating to cross-border activity [Article 6] and some minor differences (mostly setting tighter time limits for the authorisation process) for cross-border activity [Article 12];

- A number of differences on portfolio transfer rules (including applying these to all situations, not just cross-border) including being clear on *majorities* of pension scheme members and beneficiaries needing to approve any transfers. However, the ECON report maintained the Commission's approach of requiring authorisation from the regulatory authorities in the receiving schemes' home Member State, in contrast to the Council which wants authorities in the transferring *and* receiving Member States to approve any transfers [Article 13];
- Interest rate assumptions for funding levels based on *current* market rates and a broader range of bonds are explicitly mentioned [Article 14];
- Allowing cross-border pension schemes to have the same funding standards as other (not cross-border) pension schemes, notably to be underfunded for limited time periods with a recovery plan in place. This drops a more stringent requirement set by the Commission (and accepted by the Council) for cross-border schemes to be fully funded at all times [Art 15];
- Some minor changes on remuneration policy and disclosure [Article 24];
- Risk management processes and systems should be appropriate and proportional to the situation (though the Parliament's report does not pick up on the Council's idea of mandating an internal control function in the Council's new Article 26a) [Article 26];
- The risk evaluation for pensions is renamed as 'risk assessment' and some flexibility is introduced. The Council's negotiating draft extensively modified this with both more flexibility and detail [Article 29];
- The use of depositaries, which is made optional in view of existing depositary arrangements or analogous national arrangements. The Council also sought to tackle this issue, albeit in a different way [Articles 35-37];
- Much less prescriptive and more flexible rules on the Pension Benefit Statement, something the Council also seeks in its negotiating draft [Articles 38-58];
- Evaluation and review to come six years after the entry into force, rather than the four years proposed by the Commission, and sets out some specific areas it should cover including: prudential and governance measures, cross-border activity, quantitative requirements and the pension benefit statement. [Article 75];
- Member States to bring into force the necessary measures within 18 months of the Directives entry into force, rather than by 31 December 2016 as the Commission proposed, or the 24 months the Council preferred [Article 78-80].

Trilogue negotiations were held between 29 February 2016 and 15 June. On 30 June 2016, press releases from the [Commission](#), [Council](#) and [Brian Hayes](#) (EP rapporteur) announced that provisional agreement had been reached in trilogue on a [revised text](#) of the proposal. Some of the key points in the compromise text include:

- The removal of provisions for delegated acts;
- Recognition of the need for intergenerational balance of risks and benefits;
- The need for IORPs to take account of environmental, social, governance and ethical factors (often called 'ESG' for short) when IORPs make and review investment decisions and set investment policies (something introduced into the text by the EP);
- A new process for cross-border transfer of schemes by IORPs with clearer timeframes, a limited set of assessment criteria, a requirement for approval by

members and beneficiaries and a key role for both home and host countries' supervisory authorities, with a mediation role for EIOPA as necessary;

- IORPs operating cross-border being permitted to fall into periods of underfunding provided the IORP immediately draws up and implements without delay measures to ensure that members and beneficiaries are adequately protected. This is more flexible than the previous 'fully funded at all times' requirement, and more in line with the flexibility available to non-cross-border IORPs. This change may help to encourage the development of more cross-border IORPs;
- Standardised core information for pension-scheme members via annual pension benefit statements, with flexibility beyond this to account for national differences;
- Review of the directive set for six years after its entry into force; and
- Member States have to implement the necessary measures within 24 months of the entry into force of the directive.

The ECON Committee [endorsed](#) the compromise text ([vote](#): 47 votes for, 4 against and 6 abstentions) on 13 July. Following a [debate](#) on 23 November 2016, the [compromise text](#) was [adopted at first reading](#) in the plenary session on 24 November 2016 (512 [votes](#) to 70, with 40 abstentions). [Council adopted](#) the text on 8 December 2016. The Directive ((EU) 2016/2341) was published in the Official Journal on 23 December 2016 and entered into force on the 20th day following its publication, i.e. 12 January 2017. Member States have two years from this date to transpose the recast directive into their national law.

## 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> 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>3</sup> Pensions in which contributions are invested over time and then used to pay pension benefits in the future.
- <sup>4</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>5</sup> According to the Commission's [memo](#).
- <sup>6</sup> According to EIOPA's [Financial Stability Report May 2015](#) page 40.
- <sup>7</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>8</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>9</sup> See page 10 of the summary of responses to the various points raised.
- <sup>10</sup> The impact assessment did not ultimately obtain a positive assessment from the Impact Assessment Board, but the proposal was nonetheless made.
- <sup>11</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>12</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>13</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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