

Call for technical advice to the European Insurance and Occupational Pensions Authority (EIOPA) regarding the evaluation and review of the IORP II Directive

Context

By 13 January 2023, the Commission should, after consulting EIOPA, review the IORP II Directive¹ (the “Directive”) and report on its implementation and effectiveness. However, in view of the substantial delay in the transposition process, the Commission services consider that a meaningful and well-substantiated review of the Directive would not be feasible within such a short deadline.

The Commission services nevertheless intend to launch the process for a review of the Directive in due course and for that purpose seek EIOPA’s technical advice. This advice should primarily take the form of a stock taking exercise of the implementation and effectiveness of the IORP II Directive, having regard to the short time frame during which the Directive has been applied. It should cover both the application of the current rules and the way the Directive has delivered on its objectives. While the Commission is broadly satisfied with the implementation and effectiveness of the IORP Directive to date, the advice should assess options for adapting the IORP framework to ongoing trends in the area of occupational pensions.

The Commission services acknowledge that EIOPA, in the context of the implementation of the Capital Market Union Action Plan, has recently delivered technical advice on the development of pension dashboards and pension tracking tools to strengthen the monitoring of the state of play of pension adequacy in Member States and to facilitate access to individualised pension information.

Scope of the request to EIOPA

With this call for advice, and with a view to assisting the Commission in the preparation of its review in accordance with Article 62, the Commission invites EIOPA to provide advice covering the following areas:

1. An evaluation of the implementation and effectiveness of the IORP II Directive in the areas set out in Article 62 of the Directive which are:
 - a. The adequacy of the Directive from a prudential and governance point of view and the Directive’s impact on the stability of different types of IORP. The prudential and governance minimum standards laid down in the IORP II Directive are intended to guarantee a high degree of security for all future pensioners and to clear the way for a sound, prudent and effective management of occupational pension schemes. However, the application of these standards must not lead to unduly burdensome requirements, taking into account the diversity of the size, nature, scale and complexity of the

¹ Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs), OJ L 354, 23.12.2016, p. 37.

activities of IORPs within and across Member States. EIOPA should assess the implementation and the adequacy of these standards and the general impact of the Directive on the stability of IORPs. It should in particular verify whether the administrative burdens caused are justified in view of the benefits for members and beneficiaries as well as for the proper functioning of occupational pension systems and the stability of IORPs. In this context, particular attention should be paid to the situation of pure Defined Contributions (DC) schemes which do not provide a guaranteed level of benefits.

- b. Cross-border activity and transfers. Facilitating the cross-border activity of IORPs and the cross-border transfer of pension schemes is one of the main legislative objectives of the IORP II Directive. For this purpose, the Directive provides specific procedures regulating cross-border activities (Article 11) and cross-border transfers (Article 12). EIOPA should assess the implementation and effectiveness of these rules and analyse obstacles where identified.
 - c. The functioning of the Pension Benefit Statement. The purpose of the Pension Benefit Statement is to provide clear and comprehensive as well as relevant and appropriate information to facilitate the understanding of pension entitlements over time and across schemes. EIOPA should assess to what extent the current framework set out in Articles 38 to 40 of the Directive has delivered on these objectives including having regard to digitalisation and transparency of costs and charges.
 - d. Any other experience gathered in the application of the Directive, which EIOPA deems relevant and appropriate.
2. Complementing the above analysis, an assessment of possible options in relation to the following areas:
- a. Exploring the need for and possible ways to adapt the regulatory framework to the shift from Defined Benefit (DB) to Defined Contributions (DC) schemes: In many Member States, DB schemes are becoming very rare and are increasingly replaced by DC schemes. This results in a shift of the investment risk from pension providers to pension savers and an erosion of the collective level of protection in occupational pension systems. The analysis should evaluate whether the requirements under the existing legal framework under the IORP II Directive are still adapted to this reality. This part of the advice should also explore and evaluate the possible options in relation to the different types of DC scheme, i.e. on prudential, governance, and business conduct requirements, as well as requirements on information to members and beneficiaries. The Commission is aware that EIOPA has already carried out work on specific requirements of DC schemes under the existing legal framework. By issuing this call for advice, the Commission intends to build on that work.

- b. Exploring ways to strengthen the sustainability aspects of the fiduciary duties and stewardship rules of pension funds: In line with the Strategy for Financing the Transition to a Sustainable Economy², the Commission invites EIOPA to assess the potential need to broaden the concept of the “long-term best interests of members and beneficiaries” in point (a) of Article 19(1) of the IORP II Directive. In its analysis it should evaluate the possible introduction of the notion of double materiality, considering members’ and beneficiaries’ sustainability preferences and broader societal and environmental goals. EIOPA should further assess whether the ‘prudent person rule’ set out in Article 19(1) of the IORP II Directive should be clarified and/or explore possible avenues to require the integration of sustainability impacts in the investment decision.
- c. Exploring prudential requirements to include diversity and inclusion issues in relation to management bodies. This analysis should explore the need for such requirements in view of the objectives to ensure a broad representation in the management body in order to facilitate independent opinions and critical challenge and to more effectively monitor management and therefore contribute to improved risk oversight and resilience of institutions.

Procedure

The technical advice of EIOPA will be a key input to the Commission’s work on its report on the functioning of the Directive in accordance with Article 62 of the Directive. The technical advice received on the basis of this mandate will not prejudice the Commission’s final decisions in any way. In accordance with established practice, the Commission may consult other experts or seek other inputs. The European Parliament and the Council will be informed about this request which will be available on the website of the Directorate-General for Financial Stability, Financial Services and Capital Markets Union once it has been transmitted to EIOPA.

Final Considerations

The Commission requests EIOPA to deliver its technical advice to the Commission services by 1 July 2023. This will allow EIOPA to have two years implementation data (mid-2020 to mid-2022) as a basis for assessment.

The Commission invites EIOPA to consult widely within the available timeframe.

² Communication from the Commission to the European Parliament, the Council the European Economic and Social Committee and the Committee of Regions: Strategy for Financing the Transition to a Sustainable Economy, COM(2021) 390 final.

