

Recommendation to the Registrar of
Institutions of Occupational Retirement
Provision on actions necessary to comply with
Directive (EU) 2016/2341

Summary

19 December 2023

In accordance with Articles 8(2)(d) and 17(3) of Regulation (EU) No 1094/2010 (EIOPA Regulation), EIOPA is issuing a recommendation to the Registrar of Institutions of Occupational Retirement Provision (Registrar) on actions necessary to restore compliance with Directive (EU) 2016/2341 (IORP II Directive).

Pursuant to Article 17(1) of the EIOPA Regulation where a competent authority has not applied the acts referred to in Article 1(2) of that Regulation or has applied them in a way which appears to be a breach of Union law, EIOPA may open an investigation.

On 20 October 2023, following receipt of a complaint by a member of a pension fund against the Registrar, EIOPA, on its own initiative, opened an investigation. To this end, EIOPA also used relevant information collected during a field visit by EIOPA's Pensions Oversight Team to the Registrar. The field visit was part of EIOPA's efforts to assist the Registrar in performing its supervisory and regulatory tasks pursuant to Article 45 of the IORP II Directive.

On 27 October 2023, EIOPA's Board of Supervisors established a panel in accordance with Article 41(2) of the EIOPA Regulation (Panel) to consider the case and to establish whether the Registrar breached Union law. Following a conciliation meeting with the Registrar and providing the right to be heard with regard to the findings of the investigation and the draft recommendation, the Panel decided, by consensus, to proceed further and submit a draft recommendation to EIOPA's Board of Supervisors for adoption. On 18 December 2023, EIOPA's Board of Supervisors adopted this Recommendation unanimously.

The investigation focused on whether the Registrar applied Article 9(1) of the IORP II Directive correctly. This provision requires IORPs to be registered or authorized by a competent authority.

Article 9(1) of the IORP II Directive must be understood as a clear and unconditional prohibition of the operation of unregistered IORPs. The registration requirement is the fundamental requirement of IORP II, which is crucial for the good functioning of the internal market. By allowing unregistered IORPs to operate the main objective and purpose, and the foundation of the IORP II Directive are heavily compromised as member and beneficiaries pay pension contributions to IORPs that do not provide safeguards prescribed by this Directive.

As provided in recital (69) and Article 45(1) of the IORP II Directive, a non-registered IORP should not be allowed to operate as this is particularly detrimental to the interests and rights of the members and beneficiaries. A competent authority should therefore use any available means under the IORP II Directive or national laws implementing it to safeguard that objective and stop the operation of unregistered IORPs.

Against this background, the investigation demonstrated a clear breach of Article 9(1) of the IORP II Directive as it revealed and confirmed that unregistered IORPs were operating in Cyprus.

In view of restoring compliance with Union law, EIOPA addresses the following recommendations to the Registrar:

- 1. The Registrar should promptly assess all available measures under the IORP II Directive and the IORP National Law and based on the concrete action plan mentioned in the Registrar's response of 3 November 2023 conclude on the most appropriate action to restore compliance with Article 9(1) of the IORP II Directive with regard to the identified IORPs. The chosen action should result in either final registration, the rejection of the application of the IORP or closure of the process due to withdrawal of application, where appropriate, depending, inter alia, on the IORP's specific situation and viability. When assessing the IORP's viability, the Registrar should take into consideration the guidance provided in the IORPs Supervisory Handbook Chapter. When considering the appropriate action, the Registrar should consider the best interests of the members and beneficiaries. The chosen conclusive action regarding registration should be taken within ninety (90) days following the adoption of this Recommendation.**
- 2. The Registrar should have adequate, qualified resources and tools to the assessment of the registrations and the necessary follow-up actions. The Registrar should ensure that it has the power to adopt any supervisory actions or administrative sanctions against non-compliant IORPs (including illegal/non-registered funds which qualify as IORPs). To this end, the Registrar should liaise with the legislator concerning the missing secondary legislation.**

The Registrar shall report to EIOPA's Chairperson within ten working days upon the receipt of these recommendations of the steps it has taken or intends to take to fulfil the above recommendations.

Furthermore, the Registrar should provide monthly status updates to EIOPA's Chairperson on the progress made for the registrations and confirm the state of compliance within five working days upon the expiry of the deadline set out in the recommendations. In addition, the Registrar should give an update on the follow-up within six months upon the receipt of the recommendations.