

IORP 2

Some Highlights

Pensions Committee
Barcelona, 22 September 2016

- 2008: Basic question:
 - How to implement Solvency II for IORPs?
- 2011: Call for Advice to EIOPA
- 2013: Barnier: ‘no Pillar I changes’
- 2014: Commission proposal for revision
- 2016: Trilogue compromise

- European Parliament to vote on 25 October
 - Expected to be a formality

Some Highlights: General I

- As promised: no significant Pillar I changes
- *'is aimed at **minimum harmonization**' (Rec.2a)*
- *'does not concern issues of national social, labour, tax, and contract law, nor the adequacy of pension provisions' (Rec.2a)*
- *'aims to ensure good **governance**, the provision of **information** to scheme members and the **transparency** and safety of occupational retirement provision' (Rec.2b)*

Some Highlights: General II

- General principle of ‘intergenerational balance’ introduced (Rec.3a)
- Facilitating X-border activities and transfer (Rec.5)
- Encourage Member States ‘to build up adequate, safe and sustainable occupational pension provision and facilitate cross-border activity’ (Rec.9)
- ‘In order to promote a level playing field between domestic and cross-border IORPs, Member States should take into consideration the funding requirements for both domestic and cross-border IORPs’ (Rec.28)

- *‘A prudent calculation of technical provisions is an essential condition to ensure that obligations to pay retirement benefits can be met **both in the short and the long term**. Technical provisions should be calculated on the basis of recognised actuarial methods and certified by **an actuary or by another specialist in that field**. The maximum interest rates should be chosen prudently according to any relevant national rules. The minimum amount of technical provisions should both be sufficient for benefits already in payment to beneficiaries to continue to be paid and reflect the commitments that arise out of members' accrued pension rights. **The actuarial function should be carried out by persons who have knowledge of actuarial and financial mathematics, commensurate with the nature, scale and complexity of the risks inherent in the activities of the IORP, and who are able to demonstrate their relevant experience with applicable professional and other standards.**’ (Rec.25)*

- *‘The further development **at Union level of solvency models**, such as the holistic balance sheet (HBS), is **not realistic** in practical terms and not effective in terms of costs and benefits, particularly given the diversity of IORPs within and across Member States. No quantitative capital requirements - such as Solvency II or HBS models derived therefrom - should therefore be developed at the Union level with regard to IORPs, as they could potentially decrease the willingness of employers to provide occupational pension schemes.’ (Rec.60a)*

- Member States may choose not to apply the Directive for small pension institutions:
 - *< 100 members (Art. 5)*

- Articles 20.1, 22.1 and 22.2 to be applied to IORPs > 15 members
 - Art 20.1: Investments – prudent person rule
 - Art 22.1: Effective system of governance, including consideration for environmental, social and governance factors in investments
 - Art 22.2: Governance system shall be proportionate

- Article 7:
 - ‘As a general principle, where relevant, IORPs shall take into account the aim of having an *equitable spread of risks and benefits between generations* in their activities.’

Procedures (Art 12)

- IORP notifies authority Home Member State
- Home Member State Authority within 3 months of receiving all information to communicate with Host Member State Authority
- Host Member State Authority to respond within 6 weeks informing the Home Member State Authority of the social and labour law requirements
- Ongoing supervision by Host Member State Authority as to social and labour law requirements

Home Member State → where IORP is registered

Host Member State → whose social and labour law is applicable

Cross-border transfers

- Art 13.1.a: Costs of transfer not incurred by members/beneficiaries
- Art 13.1.b: Subject to prior approval by:
 - The members and beneficiaries
 - Or their representatives
 - The sponsoring undertaking
- Art 13.1.c: prior authorisation Home Member State Authority after obtaining prior consent Home Member State Authority of transferring IORP
- Information requirements listed

Cross-border transfers

- Art 13.5.b: Assessment by Authority of transferring IORP
 - Long-term interests members/beneficiaries remaining part adequately protected
 - Individual entitlements not reduced
 - Assets sufficient and appropriate
- Art 13.5.c: Home Member State Authority to communicate results of assessment within 8 weeks
- Further Information and Communication requirements listed
- Art 13.7.a: **non-binding mediation by EIOPA** possible

- *‘... in the best **long-term** interests of members and beneficiaries as a whole’ (Art.20.1.a)*
- *‘Within the ‘prudent person’ rule, Member States shall allow IORPs to take into account the potential long-term impact of investment decisions on environmental, social, and governance factors’ (Art.20.1.aa)*

- Art 22.1: *‘The system of governance shall include a consideration of environmental, social and governance factors related to investment assets in investment decisions, and shall be subject to regular internal review.’*
- Art 22.3: *‘Member States shall ensure that the **IORPs** establish and apply written policies in relation to risk management, internal audit and, where relevant, **actuarial activities** and outsourced activities.’*
- Art. 22.6: *‘Member States may allow that only one person effectively runs the IORP, ...’*

Some Highlights: Governance II

- Art 23: fit (collectively) and proper requirements
- Art 24: sound and proportionate remuneration
- Art 25: introduction of Key Functions:
 - Risk-management,
 - Internal audit and
 - Actuarial function

Art 26.2: *‘The risk-management system shall cover, **proportionate** to their size, internal organisation and the nature, scope and complexity of their activities, risks which can occur in the **IORPs** or in undertakings to which tasks or activities have been outsourced at least in the following areas, **where applicable**:*

- (a) underwriting and reserving;*
- (b) asset–liability management;*
- (c) investment, in particular derivatives, **securitisations** and similar commitments;*
- (d) liquidity and concentration risk management;*
- (e) operational risk management;*
- (f) insurance and other risk-mitigation techniques;*
- (fa) environmental, social and governance risks relating to the investment portfolio and the management thereof.***

Some Highlights: Actuarial Function

Art 28.1: 'Where an IORP itself provides cover against biometric risks or guarantees either an investment performance or a given level of benefits, Member States shall require that IORPs provide for an effective actuarial function to:

- (a) co-ordinate and oversee the calculation of technical provisions;*
- (b) assess the appropriateness of the methodologies and underlying models used in the calculation of technical provisions and the assumptions made for this purpose;*
- (c) assess the sufficiency and quality of the data used in the calculation of technical provisions;*
- (d) compare the assumptions underlying the calculation of the technical provisions with the experience;*
- (e) inform the administrative, management or supervisory body of the IORP of the reliability and adequacy of the calculation of technical provisions;*
- (f) express an opinion on the overall underwriting policy in the event of the IORP having such a policy;*
- (g) express an opinion on the adequacy of insurance arrangements in the event of the IORP having such arrangements; and*
- (h) contribute to the effective implementation of the risk management system.'*

Art 29.1: Own Risk Assessment:

- Proportionate to size and internal organisation as well as to nature, scale and complexity
- Document the assessment
- At least every three years

Some Highlights: Own Risk Assessment



Art 29.2: Member States shall ensure that the risk assessment referred to in paragraph 1, having regard to the size and internal organisation of the IORP as well as to the nature, scale and complexity of the IORP's activities, includes the following:

- (a-1) a description of how risk assessment is integrated into the management process and into the decision-making processes of the IORP;
- (a) an assessment of the effectiveness of the risk-management system;
- (ab) a description of how the IORP prevents conflicts of interest with the sponsoring undertaking, in case the IORP outsources key functions to the sponsoring undertaking in accordance with Article 25(3);
- (b) an assessment of the overall funding needs of the IORP, including a description of the recovery plan where applicable;
- (e) an assessment of the risks to members and beneficiaries relating to the paying out of their retirement benefits and the effectiveness of any remedial action taking into account, where applicable:
 - (i) indexation mechanisms;
 - (ii) benefit reduction mechanisms, including the extent to which accrued pension benefits can be reduced, under which conditions and by whom;
- (f) a qualitative assessment of the mechanisms protecting retirement benefits, including, as applicable, guarantees, covenants or any other type of financial support by the sponsoring undertaking, insurance or reinsurance by an undertaking covered by Directive 2009/138/EC or coverage by a pension protection scheme, in favour of the IORP or the members and beneficiaries;
- (g) a qualitative assessment of the operational risks;
- (h) where environmental, social and governance factors are considered in investment decisions, an assessment of new or emerging risks, including risks related to climate change, use of resources and the environment, social risks and risks related to the depreciation of assets due to regulatory change.

Appointment of a depository

*‘For an occupational pension scheme in which members and beneficiaries fully bear the investment risk, the home Member State **may** require the **IORP** to appoint **one or more depositaries...**’ (Art 35.1)*

Some Highlights: Disclosures

- Requirements for information:
 - To prospective members
 - To members
 - To beneficiaries

- General information Pension Scheme
- Pension Benefit Statement
- Supplementary Information

- Pre-retirement phase
- Pay-out phase

Information – Pension Benefit Statement (Art 40a)

- Member details (40a.5.a)
- IORP details (40a.5.b)
- Full or partial guarantees, if any (40a.5.c)
- Pension projections (40a.5.d)
- Accumulated entitlements, contributions, breakdown of costs, funding level (40a.5.f)
- “... *Member States shall exchange best practices* ...” (40a.6)

Supplementary information (Art 53)

- Practical information on member's options (Art 53.1.a)
- Annual accounts, annual report, statement of investment principles (Art 53.1.b)
- *'Where applicable, information about assumptions for amounts expressed in annuities ...'* (Art 53.1.c)
- *'Information on the level of benefits, in case of cessation of employment.'* (Art 53.1.d)
- *'For pension schemes where members bear investment risk and where an investment option is imposed on the member by a specific rule specified in the pension scheme, the pension benefit statement shall indicate where additional information is available.'* (Art 53.2)

- ‘... *to protect the rights of* members and beneficiaries *and to ensure the stability and soundness of the IORPs.*’ (Art.59.1)

Scope of prudential supervision (where applicable) (Art 60)

- (a) conditions of operations;
- (b) technical provisions;
- (c) funding of technical provisions;
- (d) regulatory own funds;
- (e) available solvency margin;
- (f) required solvency margin;
- (g) investment rules;
- (h) investment management;
- (i) *system of governance*; and
- (j) information to be provided to *members and beneficiaries*.

- Forward-looking and Risk-based (Art.61.2)

Evaluation and review (Art 75)

- After 6 years (Art 75.1)
- The review shall in particular consider:
 - the adequacy of this Directive from a prudential and governance point of view (art 75.2.a)
 - cross-border activity (art 75.2.b)
 - impact on the stability of the IORPs (art 75.2.c)
 - pension benefit statement (art 75.2.e)