

11 April 2016

POSITION PAPER ON IORP II DIRECTIVE PROPOSAL - DRAFT REPORT ECON COMMITTEE

INTRODUCTION

The European regulatory regime for IORP's is based on the directive 2003/41/EC. The initial directive contained basic requirements for IORPs which could be completed at national level, thus giving flexibility in order to properly cope with the important diversity of Pension Funds in the European Union.

On 27 March 2014, the European Commission adopted the draft for a renewal of directive 2003/41/EC, called IORP II. The target was to ensure higher supervisory standards at EU-level, including especially new governance and risk-management standards as well as information obligations towards scheme members.

On 10th December 2014, the Council agreed upon a compromise regarding the IORP-II-draft, which has to be seen as basis for negotiation in the Trilogue. This compromise has been discussed in European Parliaments ECON Committee. Rapporteur Brian Hayes presented his draft report on 28th July 2015. On 25th January, the ECON Committee in the European Parliament voted on Brian Hayes' report on the IORP II Directive (A8 – 0011/2016; dated 3rd February 2016). This report is the basis of CEEP's opinion.

GENERAL REMARKS

CEEP is fully dedicated to quality, sustainable and well-funded pension schemes which represent, through their various activities an important means of achieving social cohesion in Europe. **Guaranteeing their long-term viability through quality framework regulation fully respecting their diversity at the EU level is an essential mean to this end.**

In its press release published on 28 March 2014, CEEP welcomed the fact that the Commission's definitive proposal for a directive on the activities and supervision of institutions for occupational retirement provision (IORP hereinafter) **did not include SOLVENCY II's capital requirements** for IORPs. CEEP also welcomed the fact that the Commission proposed to improve governance and information requirements.

CEEP is convinced that IORPs are different from insurance funds or banks because there exist fundamental differences between the services each of these institutions deliver to the public. Whereas banks and insurance funds deliver financial services for commercial purposes, IORPs provide **essential long-term services with a strong social purpose, embedded in national social and labour law which differ strongly between European member States.**

Therefore, CEEP welcomes in general:

- that the report pursues a minimum harmonization approach with the Member States playing still a decisive role,
- a better view on IORP's, recital 20 and 20a:
(20) Institutions for occupational retirement provision are financial service providers which bear a heavy responsibility for the provision of occupational retirement benefits and therefore should meet certain minimum prudential standards with respect to their activities and conditions of operation, taking into account national rules and traditions. However, such institutions should not be treated as purely financial service providers as they serve an important social function due to the central role played by social partners in the running of the institutions.

(20a) An institution's social function and the triangular relationship between the employee, the employer and the institution for occupational retirement provision should be adequately acknowledged and supported as a guiding principle of this Directive.
- a clear denial regarding the Holistic Balance Sheet (HBS) approach, recital 60 a:
"The further development at the EU 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 IORP's within and across Member States....."
- the collective view regarding the fit –and proper requirements (Art. 23)
- the more principle based requirements regarding information (Art. 40a)
- the prolongation of the review from 4 to 6 years even if CEEP would prefer that the wording was 'no earlier than 6 years'.

CEEP still would like to see an appropriate consideration of the employer (see recital 20 a); especially transfers without the agreement of the liable employer should be out of consideration (see Art. 13.3: '... approval by a majority of members and a majority of the beneficiaries concerned ...')

Additionally, electronic information system for occupational pensions should be possible, but not been required as an EU-wide standard.

IN DETAIL:

CEEP WELCOMES:

Recital 20 and 20a:

The amendments outline that institutions for occupational requirement provision are different from financial service providers. They serve foremost a social purpose. Additionally, CEEP welcomes that national regulations and traditions should be taken into account.

Hence, CEEP would appreciate if the amendment of the EMPL could as well be introduced here, underlining that IORP's are **no** financial service providers but serve foremost a social purpose and produce collective social benefits; under the guidance and supervision of the social partners they bear a heavy responsibility for the provision of occupational retirement benefit. This could read as follows:

"Institutions for occupational retirement provision are not financial service providers but pension institutions that serve – first and foremost – a social purpose, provide a collective social benefit and bear a heavy responsibility for the provision of occupational retirement benefits and therefore should meet certain minimum prudential standards with respect to their activities and conditions of operation. Their social function and the triangular relationship between the employee, the employer and the institutions for occupational retirement provision (IORPs) should be adequately acknowledged and supported as a guiding principle of this Directive."

Recital 60 a:

The wording underlines that the unrealistic approach of the Holistic Balance Sheet should no longer be pursued; neither by the European law maker nor by supervisory institutions such as EIOPA.:

'The further development at EU 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 institutions within and across Member States. No quantitative capital requirements – such as Solvency II or Holistic Balance Sheet models derived therefrom – should therefore be developed at the Union level with regard to institutions for occupational retirement provisions, as they could potentially decrease the willingness of employers to provide occupational pensions.'

That EC delegated acts are completely deleted, leaving decisions on implementation to Member States (e.g. Art. 24)

Art. 40 a:

The new article 40 a does no longer require a detailed pension benefit statement and aims at clear requirements which give the members clear and transparent information.

CEEP IS DOUBTFUL ABOUT:**Art. 13.1**

The requirement of ‘fully funded at all times’ seems to be exaggerated. Such an approach might take matters a step too far in terms of harmonization. As long as the interests of the beneficiaries and later beneficiaries are secure, there should be no need for such a requirement.

Art. 14.4 - Calculation of the technical provisions based on market value:

For IORPs with their very long-term time liabilities and in some cases no option for lump sum settlement or cancellation, such a calculation of the technical provisions would not be adequate (in particular an increase in volatility for them, which is very much the opposite of what the long-term character of pensions requires; wrong incentives for the asset allocation; it would induce pro-cyclical investor behaviour and would be an obstruction to long-term investment).

Art. 14.4 da:

The proposed requirement that the institution shall provide **a full explanation of the impact of the changes on technical provisions to members and beneficiaries** when using new methods or a new basis of calculation of technical provisions is excessive. Where are the beneficiaries who would understand this? It is likely that members and beneficiaries do not expect to get this kind of information, or generally consider it not relevant to them.

Art. 20.1 b – Intergenerational balance:

A lack of “intergenerational balance” is primarily rooted in the promises employers have given their employees. This cannot be addressed through the asset allocation and without the involvement of the employer.

Generally, questions regarding intergenerational justice cannot be addressed by prudential law alone, but only if national labour law is also taken into account. For example regarding benefit cuts in older contracts the question arises what to do with the shortfall, because the benefit cut by the IORP does not necessarily change the given pension promise. This is only possible at the Member State level.

Art. 38.2 db (to be read in conjunction with Recital 35a):

Electronic information should not trump paper-based information. It should be possible to provide information both electronically and paper-based, IORPs should be able to use both means on equal terms, being allowed to choose the one which suits them best.

OTHER CRITICAL POINTS HAVE TO BE MENTIONED:

Art. 3a (Duty of Care)

Transfers of pension schemes should be left to the national supervisory authorities

The new Art. 3a should be deleted in its entirety. It would create again a new role for EIOPA, not as an intermediary between two national authorities, but in relation to transfers of pension schemes as the (final) decision maker. No competencies which can be better addressed by national authorities should be transferred to the EU supervisory authority EIOPA. This is particularly the case for the rotation of the interests of the members and beneficiaries affected by a transfer of pension schemes.

Article 6, § 1, point a, introductory part

CEEP still favours that the definition of institutions for occupational retirement provision should make clear that these are no financial service providers. Therefore, the text should read:

*‘(a) ‘institution for occupational retirement provision’, or ‘institution’, means an institution **which, apart from those institutions included under article 4, is not a financial service provider,** irrespective of its legal form, operating on a funded basis and established separately from any sponsoring undertaking or trade for the **sole** purpose of providing retirement benefits in the context of an occupational activity on the basis of an agreement or a contract agreed: ...’*

Art 8 – Separation of IORP and sponsor

The phrase ‘legal separation’ both has the potential for differential interpretation across the Member States and focuses the Article on the method for achieving separation rather than the objective for such separation. Requiring Member States to ensure that sufficient separation exists to meet the objective of the Article would provide for a more flexible and robust approach to achieving the necessary level of separation which is appropriate to the legal and regulatory framework within each Member State. CEEP therefore proposes that this Article is amended as follows (new wording in bold):

*‘Member States shall ensure that there is ~~legal~~ **sufficient** separation between a sponsoring undertaking and an institution for occupational retirement provision in order to **satisfy the competent authorities of the Member State** that the assets of the institution are safeguarded in the interests of members and beneficiaries in the event of bankruptcy of the sponsoring undertaking.’*

Art. 13 – Transfer of pension schemes:

Rules for the transfer of pension schemes have to be adequate and they need to work. The rules on the transfer of pension schemes as proposed by the ECON Committee in Art. 13 and in the new Art. 3a are neither adequate nor will their work in practice.

- The requirement to be fully funded (as proposed in para. 1) is only justified if both the schemes (receiving and transferring) are fully funded prior to the transfer. If either or both are subject to a deficit recovery plan under Article 15(2) they should not be expected to complete that plan at that the point of transfer either for cross-border transfers of pension schemes or transfers within a Member State;

CEEP therefore propose to delete (1) from the end of the Article which would enable whichever part of Article 15 (1) or (2) which applied prior to the transfer to continue to apply after the transfer. The last part of the Article would read as follows:

‘.....Member States shall require the transferring and the receiving institution to have sufficient and appropriate assets to cover the technical provisions for the transferred part and the remaining part of the scheme, in accordance with Article 15~~(1)~~.’

- Art. 13.3 – Requirement of approval (according to the ECON Committee this should in the future also apply to the transfer of pension schemes within a Member State): The interests of members and beneficiaries have to be protected when a pension scheme is transferred. Since only very few members and beneficiaries are in a position to assess whether the transfer conditions protect their interests, the proposed requirement of member approval is likely to lead to a blocking of the transfer, making efficient organization of occupational pensions difficult. The rules created for insurance undertakings (Art. 39 Solvency II Directive) seem to make much more sense. They consider member interests to be protected if the authority of the home Member State of the transferring insurance company authorizes the transfer after the authority of the home Member State of the receiving insurance company has certified that the pension scheme can be appropriately transferred. It is not intended that EIOPA takes part in the decision making.

CEEP would prefer this article to be deleted, however, if that is not possible, CEEP proposes that the article should be amended as follows:

*‘3. The transfer and its conditions shall be made subject to **consultation with** a majority of members and a majority of the beneficiaries concerned or, where applicable, **with** a majority of their representatives. The information on the conditions of the transfer shall be made available to the members and beneficiaries concerned or, where applicable, to their representatives at least four months before the application referred to in paragraph 2 is submitted.’*

Art. 20.1a) – interests of members and beneficiaries:

The objective of this Article is fully supported by CEEP but feels it would benefit from an increased degree of clarity. Although it may be self-evident that the objective of the Article is to ensure investment is targeted to secure the benefits of the members and beneficiaries, CEEP is of the opinion that including a tighter definition would avoid misunderstanding and better enable institutions to focus on the objective of the Article. CEEP therefore propose that the following wording (in bold) is added to the Article to achieve this aim:

*(a) the assets shall be invested in the best long-term interests of **securing the benefits of members and beneficiaries as a whole**. In the case of a potential conflict of interest, the institution, or the entity which manages its portfolio, shall ensure that the investment is made in the sole interest of **securing the benefits of members and beneficiaries**;*

Art. 29 – Own risk assessment:

The ECON requirements are drafted in such an unspecific way that they could develop in practice – in particular when EIOPA adds further guidelines – into a Holistic Balance Sheet through the back door. In contrast, the Council text is more detailed, but still abstract and principle-based and prescribes in the Directive text what IORPs have to do regarding their own risk assessment. From our perspective it is crucial that the implementation details are left to the Member States – this is the only appropriate way (Council wording: „Member States shall require institutions in a manner that is appropriate to their size and internal organisation, as well as to the nature, scale and complexity of their activities, to carry out a risk assessment and to produce a risk evaluation for pensions in order to document that assessment.“).

Because of the different roles and the different forms national social and labour law takes, occupational pension systems vary significantly across Member States. Council and EP therefore rightly rejected the delegated acts in the IORP Directive proposal by the Commission. Both Council and EP make it very clear (see Recital 2a) that the objective of the IORP II Directive is minimum harmonisation. The details concerning Art. 29 should be set out at Member State level. There should be no room for EIOPA guidelines, which could then potentially result in a harmonised quantitative approach for the whole EU.

Guidelines would formally not be binding for IORPs, but the national authorities are required to ensure that they are followed. This de facto means that they are binding. These guidelines would be important rules which would be created without the involvement of the Council or the Parliament. Neither the national supervisory authorities nor IORPs would have a right of appeal against them.

Despite the high level of detail in Art. 29 in the Council position, we prefer it over the unclear versions by the ECON Committee and the Commission. Neither the ECON Committee’s report nor the Commission’s proposals include a role for the individual Member States in setting the details for the implementation of the Article. This in particular applies to paragraphs 1 and 2.

To avoid any confusion with the wording in the Solvency II Directive, the IORP II Directive should refer to “risk evaluation for pensions – REP”.

Art. 29.4:

The risk assessment is a supervisory tool! It is carried out for the supervisory authority, which in turn defines its measures based on its results. It is not intended for the members and beneficiaries.

Art. 40 a Statements:

CEEP welcomes the higher level approach to the regulation of statements reflected in this Article. However, whilst fully supporting the objective of the issuing of accurate statements to all members every year CEEP would wish to raise the possibility that events such as the introduction of radically different scheme structures or the failure of thirds parties to provide institutions will complete and accurate data may prevent that objective being met. In such cases CEEP would like to see the competent authorities within member states take a sensible approach to enforcement of this Article in order to avoid the possibility of institutions having to knowingly send out inaccurate statements to some members in order to meet requirement to issue to each member at least annually.

Art. 75.2d:

The review of quantitative requirements six years after the date of entry into force of the Directive should be changed to require a review no earlier than six years. After years of discussion about new quantitative requirements, IORPs and in particular their sponsoring undertakings now need certainty to be able to plan for the future.

Recital 57 provides for a review of and report on the IORP II Directive “after consulting EIOPA”.

Art. 80.2 – Implementing period for the new Directive:

The ECON Committee text only provides 18 months after entry into force of the IORP II Directive. However, IORPs will need to adopt the new rules in their statutes, needing time to pass any changes through their own relevant bodies and then submit them to the relevant national authority for approval. This process takes around a year, not including any time for preparations and deliberations. We therefore call for an implementation period of at least 24 months.