

Institutions for Occupational Retirement Provision (IORP)

Directive 2016/2341 (IORPII) concerning the activities and monitoring of the Institutions for Occupational Retirement Provisions (IORP). It reviews the current directive (2003/41/EC) on retirement schemes.

1. Presentation

Retirement schemes in Europe are generally both very complex and varied. They are the result of the history of social dialogue within each country, and are based on three pillars:

The first is constituted by the public pension schemes linked to revenues,

The second are private schemes of an occupational nature,

The third incorporates retirement schemes of an individual nature.

If the first pillar is supposed to remain the most important pension system, the EC observes that most member states in the EU have set up reforms to explore alternatives.

What is this Directive trying to do?

Two major reasons can be seen in the wish of the Commission to review the current IORP regime:

- 1) The need for transparency with regard to information provided to members and beneficiaries of IORPs.
- 2) The intention to facilitate the cross-border development of pension schemes and the importance of harmonising the various European pension systems.

This necessity of transparency is expressed by an obligation to provide details of the investments and new information reports to the members and beneficiaries of the IORPs. And for the IORPs, the necessity to develop new monitoring tools and the obligation to set up appropriate and detailed risk management.

What will be the impacts?

If we look at the regulatory text, there is this obligation for a pension fund to appoint a depository which will have a custody and safekeeping role for the Fund assets. This depository bank may be located in a country other than the one where the fund is set up. The pension fund (Anglo-Saxon origin), is an investment fund dedicated to capitalisation pension schemes.

In Luxembourg, the European leader for domiciliation and administration of investment funds with more than **€3,000 billion of net assets**, pension funds regulation has been in place since 1999. Updated in 2003, it implies that any pension fund must have a depository for the custody of its assets and also an asset and liabilities manager. Luxembourg has today 15 pension funds, entities endowed with a legal entity and intended to cover the services relating to retirement as well as additional services in the event of death and disability. The Luxembourg market currently offers a choice of structures which are particularly suitable for multinational companies and expatriate workers:

- ✓ a company structure where the beneficiaries are also shareholders in the company - the **pension savings company with a variable capital (SEPCAV)**. When a member retires, the income from the contributions invested will be repaid in the form of a capital sum.
- ✓ an associative structure whose aim is to guarantee the payment of pensions determined by pension regulation - the **Pension Savings Association (ASSEP)**. This undertakes to pay annuities or capital sums to the members who are the fund's creditors.

These two legal structures are monitored by the Luxembourg regulator (the CSSF).

- ✓ And the **"CAA fund"**, a pension fund subject to supervisory review by the Commissariat aux Assurances (The Luxembourg Insurance Authority).

With this Directive, pension funds should set up controls and issue additional information for the Regulators. Banks have the expertise as they provide fund administration and custody services within the scope of the current AIFM and UCITS V Directives.

What might be the obstacles of this Directive?

It is too soon to know as of today what the practical consequences will be in each European country to this proposed Directive, whose transposition is scheduled for **13 January 2019**.

Pitfalls are many and common rules must be set up on a number of complex subjects, such as:

1. how pillars 2 and 3 work in the various European countries;
2. the supervisory powers (eligibility and monitoring of the IORPs);

3. requirements in governance and risk management;
4. the method of communication with members, with a clear and understandable information system.

The European Commission has an interest in encouraging cross-border pensions. IORP II has added some revisions in the area of cross-border pensions, including clarifications to the roles of home and host country regulators, information requirements and transfers between IORPs.

IORP II represents an outcome and a step to encourage cross-border pensions.

In parallel, initiatives at EIPOA level

On its own initiative, EIPOA decided to carry out an analysis for the EC in order to facilitate the technical expertise on the solvency rules for IORP. The outcome of this work has been provided by EIOPA on 26 January 2016. It came out a resistance to market stress in the long run.

Brexit impact

The extent to which IORP II will apply to the UK will depend how and when Brexit occurs. But it might appear that the Directive now holds no interest to the U.K. It is also unclear whether the resignation of Commissioner Lord Jonathan Hill, whose Directorate is responsible for this Directive, might lead to further developments.

New pan-European label- PEPP

In parallel of this Directive the Commission launched on 29 June 2017 a new class of pension products, the PEPP (pan-european personal pension). This proposal is accompanied by a Recommendation on the tax treatment to grant the same tax treatment to PEPPs as is currently granted to similar existing national products. On 19 June 2018 the Council agreed on the final compromise for submission to the Parliament. Once adopted, this Regulation will enter into force 20 days after its publication in the OJ of the EU.

2. Chronology of events



- **27 March 2014:** In response to “*Call for Advice*” from EIOPA¹, the European Commission adopted a legislative project² aiming at establishing new regulations on Institutions for Occupational Retirement Provision (IORP). This meant reviewing Directive 2003/41/EC with the aim of improving the governance and transparency of these institutions in Europe, as well as promoting cross-border activities and long-term investment.
- **17 September 2014:** An initial agreement³ to the project was proposed during the Italian presidency of the Council of the European Union; followed by a second⁴ in October and a third⁵ and fourth agreement⁶ in November.
- **28 November 2014:** A revised version of the fourth agreement⁷ was published, at the same time as a review mandate⁸.
- **10 December 2014:** On behalf of the Council, the Committee of EU permanent representatives agreed to a negotiation phase⁹ for a proposed Directive IORP II, opening the negotiations with the Parliament to have the Directive adopted.
- **28 May 2015:** Following adoption of a draft opinion¹⁰ in February, the economic affairs commission, EMPL, voted and adopted its amendments to the proposed Directive.¹¹
- **25 January 2016 :** The Economic Affairs Committee (ECON) of the European Parliament approved IORP II (47 pros against 3).

¹ May be consulted on: <https://eiopa.europa.eu/Publications/Requests%20for%20advice/20110409-CfA-IORPII-final.pdf>

² May be consulted on: http://eur-lex.europa.eu/resource.html?uri=cellar:33cb1b95-b6c8-11e3-86f9-01aa75ed71a1.0002.01/DOC_1&format=PDF

³ May be consulted on: <http://register.consilium.europa.eu/doc/srv?!=EN&f=ST%2013278%202014%20INIT>

⁴ May be consulted on: <http://data.consilium.europa.eu/doc/document/ST-14643-2014-INIT/en/pdf>

⁵ May be consulted on: <http://data.consilium.europa.eu/doc/document/ST-15207-2014-INIT/en/pdf>

⁶ May be consulted on: <http://data.consilium.europa.eu/doc/document/ST-15901-2014-INIT/en/pdf>

⁷ May be consulted on: <http://data.consilium.europa.eu/doc/document/ST-15901-2014-REV-2/en/pdf>

⁸ May be consulted on: <http://data.consilium.europa.eu/doc/document/ST-16620-2014-INIT/en/pdf>

⁹ May be consulted on: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ecofin/146148.pdf

¹⁰ May be consulted on: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-541.293+01+DOC+PDF+V0//EN&language=EN>

¹¹ May be consulted on:

http://www.europarl.europa.eu/meetdocs/2014_2019/documents/empl/dv/1062/1062627/1062627en.pdf

- **29 Feb, 15 March 13 April and 4 May 2016:** Tripartite negotiation (Trilogue) between Parliament representatives, the Council and the Commission.
- **10 May 2016:** Vote in plenary session.
- **30 June 2016:** The European Parliament, the Council and the Commission have agreed on a proposal for a revised Directive on occupational pension funds, known as IORP2.
- **27 July 2016:** The EC launches a public consultation on personal (or private) pensions open until 31 October 2016.
- **24 November 2016:** The final text has been approved by the European Parliament.

The text published in the Official Journal of the EU on 23 December 2016 entered into force on 13 January 2017, but is only applicable as from **13 January 2019**. European Member States have 24 months (**until 13 January 2019**) to transpose this directive into domestic legislation.

3. Reference text(s) and date of entry into force



The text has been published in the Official Journal of the EU on 23 December 2016

Links: <http://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX%3A32016L2341>



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