

10 December 2012

**Consultation Paper**  
**on**  
**Draft Implementing**  
**Technical Standards**  
**on**  
**reporting of national provisions of**  
**prudential nature relevant to the field of**  
**occupational pension schemes**

*EIOPA welcomes comments from interested parties on the following consultation paper.*

*Please send your comments to EIOPA by email ([CP-12-005@eiopa.europa.eu](mailto:CP-12-005@eiopa.europa.eu)) by 10.03.2013, indicating the reference "EIOPA-CP-12-005".*

*Please note that comments submitted after the deadline or not submitted in the provided template format in MS Word **cannot** be processed.*

*EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.*

## Table of Contents

<b>1.</b>	<b>Responding to this paper .....</b>	<b>3</b>
<b>2.</b>	<b>Consultation Paper Overview &amp; Next Steps .....</b>	<b>4</b>
<b>3.</b>	<b>Draft Technical Standard .....</b>	<b>5</b>
<b>4.</b>	<b>Explanatory text .....</b>	<b>14</b>
	<b>Annex I: Impact Assessment.....</b>	<b>16</b>
	<b>Annex II: Overview of Questions for Consultation.....</b>	<b>27</b>

# 1. Responding to this paper

EIOPA welcomes comments on the Consultation Paper on Draft Implementing Technical Standards on reporting of national provisions of prudential nature relevant to the field of occupational pension schemes.

The consultation package includes:

- The Consultation Paper
- Template for comments

Please send your comments to EIOPA in the provided Template for Comments, by email [CP-12-005@eiopa.europa.eu](mailto:CP-12-005@eiopa.europa.eu), by **10 March 2013 18.00 CET**.

Contributions not provided in the template for comments, or sent to a different email address, or after the deadline will not be processed.

EIOPA invites comments on any aspect of this paper and in particular on the specific questions summarised in Annex II. Comments are most helpful if they:

- respond to the question stated;
- contain a clear rationale; and
- describe any alternatives EIOPA should consider.

## Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise in the respective field in the template for comments. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with EIOPA's rules on public access to documents<sup>1</sup>. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by EIOPA's Board of Appeal and the European Ombudsman.

## Data protection

Information on data protection can be found at [www.eiopa.europa.eu](http://www.eiopa.europa.eu) under the heading 'Legal notice'.

---

<sup>1</sup> [Public access to documents](#)

## **2. Consultation Paper Overview & Next Steps**

EIOPA carries out consultations in the case of drafting Technical Standards in accordance to Articles 10 and 15 of the EIOPA Regulation.

This Consultation Paper is being issued to fulfil the mandate conferred on EIOPA by Article 20 (11) of the Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision as amended by Directive 2010/78/EU, which requires EIOPA to draft implementing technical standards on the procedures to be followed and formats and templates to be used by the competent authorities when transmitting and updating to EIOPA the information on national provisions of prudential nature relevant to the field of occupational pension schemes.

This Consultation Paper presents the draft Implementing Technical Standard (ITS)

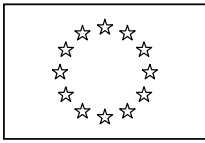
The analysis of the expected impact from the proposed policy is covered under the Annex I (Impact Assessment).

Specific questions to the draft ITS are being asked for the purpose of the consultation and should be answered by using the template for comments provided by EIOPA. Annex II comprises the overview of all questions asked.

### **Next steps**

EIOPA will consider the feedback received and expects to publish a final report on the consultation by 30 June 2013 and to submit the draft ITS for endorsement by the European Commission by 1 January 2014.

### **3. Draft Technical Standard**



EUROPEAN COMMISSION

Brussels, XXX  
[...] (2013) XXX draft

**COMMISSION IMPLEMENTING REGULATION (EU) No .../..**

**of [ ]**

**COMMISSION IMPLEMENTING REGULATION (EU) No .../..laying down  
implementing technical standards with regard to the reporting of national provisions of  
prudential nature relevant to the field of occupational pension schemes according to  
Directive 2003/41/EC on the activities and supervision of institutions for occupational  
retirement provision**

of [ ]

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2003/41/EC of the European Parliament and of the Council of 3 June of 2003 on the activities and supervision of institutions for occupational retirement provision and in particular Article 20(11) thereof.

Whereas:

- (1) Member States shall report to the European Insurance and Occupational Pensions Authority (hereinafter “EIOPA”) their national provisions of prudential nature relevant to the field of occupational pension schemes, which are not covered by the reference to national social and labour law in Article 20(1) of Directive 2003/41/EC. The requirements laid down in this Regulation do not affect Member State competences as provided for in Directive 2003/41/EC with regard to the national social and labour law applicable to institutions for occupational retirement provision (hereinafter “IORPs”).
- (2) National provisions of prudential nature relevant to the field of occupational pension schemes, which are not covered by the reference to national social and labour law in Article 20(1) of Directive 2003/41/EC may differ according to Member State. Therefore, for the purposes of this Regulation, those national provisions shall comprise provisions contained in Articles 9 to 19 of Directive 2003/41/EC with the exception of Article 11. Any additional provisions recognised by a Member State as being prudential in nature and applicable to IORPs shall be also reported.
- (3) In order to ensure uniform reporting of national provisions of prudential nature relevant to the field of occupational pension schemes, which are not covered by the reference to national social and labour law in Article 20(1) of Directive 2003/41/EC, this Regulation provides a template to be used when competent authorities transmit the requested information. To allow for an easy use and comparability of the information, the template items correspond to the provisions of Directive 2003/41/EC.

- (4) The provisions containing requirements on IORPs and for which the home Member State is responsible for the purposes of cross-border supervision, are included in the template. In addition, the template allows for the reporting of other provisions of national law applicable to IORPs, if any, that are recognised by the competent authority as provisions of prudential nature.
- (5) Provisions which a Member State classifies as exclusively social and labour law are excluded from the reporting requirement. Member States may have other provisions applicable to IORPs therefore the list of template items may not be exhaustive with regard to the legal and regulatory framework in which IORPs operate.
- (6) Information on national provisions of prudential nature relevant to the field of occupational pension schemes, which are not covered by the reference to national social and labour law in Article 20(1) of Directive 2003/41/EC needs to be kept up to date without imposing a disproportional burden on competent authorities and therefore reporting is limited to once a year. To increase the consistency of the disclosure of the information, the date to which the reporting refers is fixed on 1 March and the reporting date is fixed on the last day of June. Competent authorities may update that information between reporting dates on a voluntary basis.
- (7) To ensure that information on national provisions of prudential nature relevant to the field of occupational pension schemes, which are not covered by the reference to national social and labour law in Article 20(1) of Directive 2003/41/EC is available shortly after entry into force of this Regulation, irrespective of the reporting date set in this Regulation, initial transmission should happen within 6 months after entry into force of this Regulation.
- (8) This Regulation is based on the draft implementing technical standards submitted by EIOPA to the Commission.
- (9) As specified in Recital 32 of Directive 2010/78/EC (Omnibus I), the technical standards drafted by EIOPA should be without prejudice to the competences of Member States with regard to prudential requirements on such institutions as provided for in Directive 2003/41/EC.
- (10) *[A more detailed Recital would be necessary where the Commission has amended the said draft due to specific circumstances or has deviated from normal procedure. This Recital should also confirm that the Commission has followed the relevant procedure].*
- (11) EIOPA has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Occupational Pensions Stakeholder Group established by Article 37 of Regulation (EU) No 1094/2010.



HAS ADOPTED THIS REGULATION:

**Article 1**  
**Subject-matter and scope**

1. This Regulation lays down the procedures to be followed and the formats and templates to be used by the competent authorities when transmitting and updating the national provisions of prudential nature relevant to the field of occupational pensions schemes, which are not covered by the reference to national social and labour law in Article 20 (1) of the IORP Directive (hereinafter “national provisions of prudential nature”).
2. For the purposes of this Regulation, national provisions of prudential nature shall comprise provisions contained in Articles 9 to 19 of Directive 20003/41/EC with the exception of Article 11.
3. Provisions which a Member State classifies as exclusively social and labour law shall be excluded from the reporting requirement.

**Article 2**  
**Reporting procedures**

1. Competent authorities shall transmit the information on national provisions of prudential nature annually by the end of June beginning in the second calendar year after entry into force of this Regulation.
2. The information shall contain national provisions of prudential nature effective from the 1<sup>st</sup> of March, except for the first transmission referred to in paragraph 3.
3. Competent authorities shall transmit the templates for the first time within 6 months after entry into force of this Regulation. The templates shall contain the national provisions of prudential nature as effective on the date of entry into force of this Regulation.
4. Competent authorities may update the information on the national provisions of prudential nature voluntarily between reporting dates.

**Article 3**  
**Reporting format and templates**

1. Competent authorities shall report and update the national provisions of prudential nature using the templates in the Annex, indicating:
  - a. name of the competent authority, date of submission to EIOPA, and name of the Member State;

- b. whether it is an initial transmission, voluntary or annual update;
  - c. the official name of the acts and other relevant instruments where applicable containing national provisions of prudential nature;
  - d. references to the respective number and title of the section(s) of the texts of the acts and other relevant instruments, where applicable.
2. In case a further explanation is considered necessary, the competent authority shall provide these details in the template under field notes.
  3. Competent authorities shall include in the template a hyperlink to the relevant section of the website containing the full text of the act or acts and other relevant instruments referred to in paragraph 1, where available.
  4. The template items shall be given the meaning according to the corresponding provisions of the IORP Directive.
  5. Competent authorities shall submit the completed templates to EIOPA in an electronic format.

#### **Article 4**

#### **Reporting of additional provisions**

Where a competent authority considers that the national law applicable to IORPs contains provisions of prudential law that are not captured by the definition pursuant to Article 1 (2) the competent authority shall report these provisions to EIOPA. Articles 2 and 3 shall apply *mutatis mutandis*.

#### **Article 5**

#### **Entry into force**

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [...].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [ ]

*[For the Commission  
The President]*

*[On behalf of the President]*

*[Position]*

## ANNEX

Template on the national provisions of prudential nature relevant to the field of occupational pension schemes			
	Competent Authority	Member State	Date of reporting to EIOPA
		Type of report    a) initial transmission according to Art. 2 (3) b) voluntary update according to Art. 2 (4) c) annual update according to Art. 2 (1)	
<b>Code</b>	<b>Item</b>	<b>Corresponding provisions of IORP Directive</b>	
10	Conditions of operation	Art. 9	
	Number, title of the section(s) and official name of the relevant acts and other relevant instruments, if applicable:		
	Hyperlink(s) to the full text of the national legislation:		
20	Annual accounts and annual reports	Art. 10	
	Number, title of the section(s) and official name of the relevant acts and other relevant instruments, if applicable:		
	Hyperlink(s) to the full text of the national legislation:		
30	Statement of investment policy principles	Art. 12	
	Number, title of the section(s) and official name of the relevant acts and other relevant instruments, if applicable:		
	Hyperlink(s) to the full text of the national legislation:		
40	Information to be provided to the competent authorities	Art. 13	
	Number, title of the section(s) and official name of the relevant acts and other relevant instruments, if applicable:		
	Hyperlink(s) to the full text of the national legislation:		
50	Powers of intervention and duties of the competent authorities	Art. 14	
	Number, title of the section(s) and official name of the relevant acts and other relevant instruments, if applicable:		
	Hyperlink(s) to the full text of the national legislation:		
60	Technical provisions	Art. 15	
	Number, title of the section(s) and official name of the relevant acts and other relevant instruments, if applicable:		
	Hyperlink(s) to the full text of the national legislation:		

70	Funding of technical provisions	Art. 16
	Number, title of the section(s) and official name of the relevant acts and other relevant instruments, if applicable:	
	Hyperlink(s) to the full text of the national legislation:	
80	Regulatory own funds	Art. 17
	Number, title of the section(s) and official name of the relevant acts and other relevant instruments, if applicable:	
	Hyperlink(s) to the full text of the national legislation:	
90	Investment rules	Art. 18
	Number, title of the section(s) and official name of the relevant acts and other relevant instruments, if applicable:	
	Hyperlink(s) to the full text of the national legislation:	
100	Management and custody	Art. 19
	Number, title of the section(s) and official name of the relevant acts and other relevant instruments, if applicable:	
	Hyperlink(s) to the full text of the national legislation:	

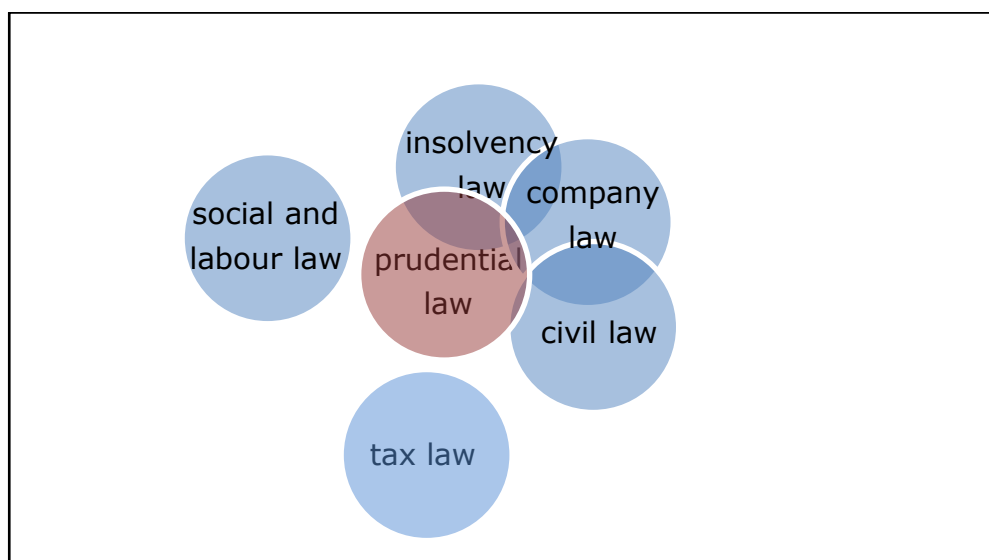
Other	National provisions of prudential nature relevant to the field of occupational pension schemes that are not captured in the listing above.
Notes	

## 4. Explanatory text

### Regulatory approach followed in the draft ITS

1. In accordance with the empowerment in Article 20 (11) of the IORP Directive, the draft ITS imposes reporting obligations on Member States via their respective competent authorities. The ITS does not impose any direct obligations on IORPs, sponsoring undertakings or members and beneficiaries. The ITS was drafted in a way to minimise compliance costs for competent authorities and to diminish the possibility of incurred expenses being transferred to other stakeholders.
2. The empowerment to draft this ITS was initially introduced by Article 4(5) of Directive 2010/78/EU (hereafter "Omnibus I") which amended Article 20 of the IORP Directive. The ITS seeks to ensure that information on national provisions of prudential nature relevant to the field of occupational pension schemes is reported by competent authorities to EIOPA following uniform rules.
3. The draft ITS is concerned with reporting national provisions of a prudential nature. However, there is no definition of "prudential law" in the current IORP Directive. In addition to the IORP Directive, the rules governing the operation of IORPs in Member States may include also *inter alia* civil law, company law, insolvency law, tax law, social and labour law, which fall - fully or to a large extent - within the competence of Member States. Accordingly, any attempts to draw a clear borderline/distinction between prudential law and other laws for the purpose of this ITS would interfere with the division of competences between EU and Member States.

Figure 1 - Position of prudential law position in the legal system of most of EU Member States



The laws represented by blue circles fall - fully or to a large extent - within the competence of Member States. The relations among different laws and their interplay with prudential law differ from Member State to Member State.

4. Furthermore, it is important to note that implementing technical standards are implementing acts endorsed by the Commission, and they cannot contain policy choices. As noted in Article 15 of the EIOPA Regulation, ITS *"shall be technical, shall not imply strategic decisions or policy choices and their content shall be to determine the conditions of application of those acts."*
5. To fulfil the mandate conferred on EIOPA by Article 20 (11) of the IORP Directive, in order to provide a structured overview of national provisions of prudential nature, the ITS requires Member States to report to EIOPA on their prudential rules implementing Articles 9 – 19 of the IORP Directive (with the exception of Article 11), i.e. rules that are in the case of cross-border activity supervised by home competent authorities and must have been implemented in all Member States.
6. The ITS require competent authorities to report also other provisions of prudential nature, applicable to IORPs within their jurisdictions, if any. However, due to the abovementioned practical and legal obstacles it is left up to the competent authorities to identify which provisions are reported.

# Annex I: Impact Assessment

## 1: Procedural issues and consultation of interested parties

1. In order to fulfil EIOPA's obligation to prepare a draft implementing technical standard (ITS) as per Article 20 (11) of the IORP Directive, EIOPA's Occupational Pensions Committee (OPC) established in March 2012 a subgroup whose task was to prepare a draft implementing standards for public consultation.
2. According to Article 15 (1) second subparagraph of the EIOPA Regulation, the Authority shall analyse the potential related costs and benefits of the ITS, unless such analyses are disproportionate in relation to the scope and impact of the draft ITS concerned or in relation to the particular urgency of the matter.
3. The impact assessment (IA) aims to provide the reader with an overview of findings with regard to the problem definition, options identified to remove the problem and their potential impacts.
4. Stakeholders' responses to the public consultation will serve as a valuable input in a further development of the draft implementing technical standard (ITS).

## 2: Problem definition

5. The IORP Directive was published in the Official Journal on 23 September 2003 and had to be implemented by Member States by 23 September 2005. This Directive is a minimum harmonisation instrument with a main objective to create a Community legal framework covering institutions for occupational retirement provision<sup>2</sup> as it provides for prudential regulation based on minimum harmonisation and mutual recognition. In addition, the IORP Directive provides a framework for cross-border activity of IORPs by enabling an employer in one Member State to sponsor an IORP located in another Member State or, conversely, by enabling an IORP located in one Member State to be sponsored by one or more employers in different Member States.
6. Although since the implementation of the IORP Directive by Member States there has been an increase in the number of cross-border pension arrangements, the level of cross-border cases still remains relatively low. According to data published by the European Commission, in 2011 there were less than 80 IORPs operating across different Member States, which

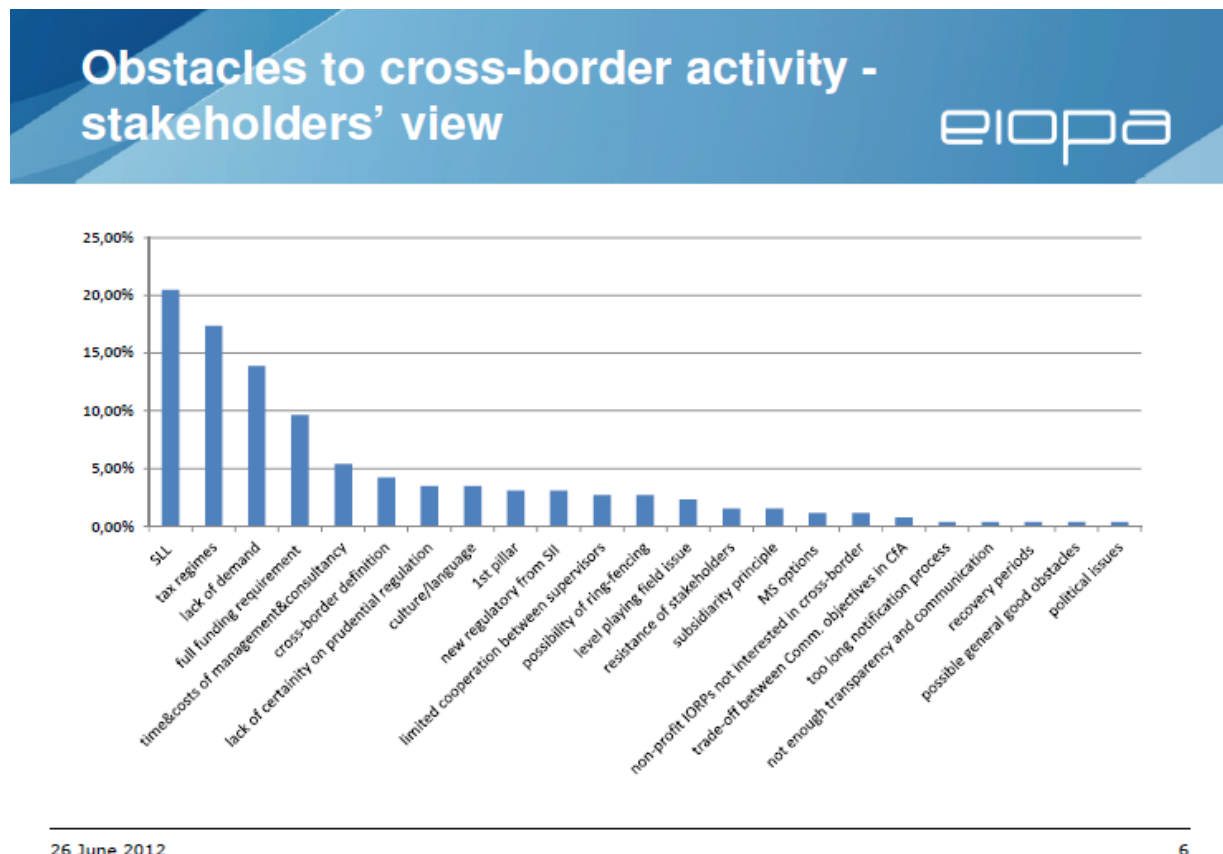
---

<sup>2</sup> Recital 40 of the IORP Directive.



represents a very small proportion of the ca. 140 000 IORPs existing in the EU.<sup>3</sup> The Market Development report<sup>4</sup> published by EIOPA shows that till June 2012, a total number of 84 cross-border IORPs exists.

7. A chart below presents obstacles to cross-border activity identified by stakeholders in their responses to the EIOPA consultation papers on the review of the IORP Directive. A lack of certainty on prudential regulation (law) is one of the barriers mentioned by some of the stakeholders. There is also an issue of what is considered a prudential law and social and labour law (SLL) in different Member States. Thus, the uncertainty about the prudential law and social and labour law seems to be one of the reasons behind the low level of cross-border IORPs in the European Union.
8. The interaction between prudential law and SLL is not always clear and there is a wide diversity in views of what constitutes prudential law between Member States making a common standard very difficult to achieve.



Source: Keynote speech of the EIOPA Chair "Enhancing the European market for occupational pension provision" <https://eiopa.europa.eu/press-room/speeches-presentations-and-interviews/index.html>. The chart is based on EIOPA internal analysis of stakeholders' replies to EIOPA's Advice on revision of IORP Directive.

<sup>3</sup> Call for advice from the European Insurance and Occupational Pensions Authority (EIOPA) for the review of Directive 2003/41/EC (IORP II), page 3. Available at:

[http://ec.europa.eu/internal\\_market/pensions/docs/calls/042011\\_call\\_en.pdf](http://ec.europa.eu/internal_market/pensions/docs/calls/042011_call_en.pdf)

<sup>4</sup> 2012 Report on Market Developments, EIOPA-OPC-12/046. Available at:

[https://eiopa.europa.eu/fileadmin/tx\\_dam/files/publications/reports/2012-07-25\\_EIOPA-OPC-12-046\\_Report\\_on\\_market\\_developments\\_2012\\_\\_1\\_.pdf](https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/reports/2012-07-25_EIOPA-OPC-12-046_Report_on_market_developments_2012__1_.pdf)

9. The relevant prudential law for occupational pension schemes in a Member State is contained within its own legal and regulatory framework and each Member State has its own arrangements for sharing that information with stakeholders (e.g. official journals, websites of competent authorities). In order to create a centralised source of information at EU level on national provisions of prudential nature these draft implementing technical standards provide for uniform rules on procedures, formats and templates to be used by competent authorities when reporting to EIOPA. The competent authorities will provide information on their national provisions of a prudential nature relevant to the field of occupational pension schemes, which are not covered by the reference to national social and labour law in Article 20(1) of the IORP Directive on annual basis. EIOPA will make that information available on its website.
10. The analysis of the expected impact of the ITS is compared to the expected impact from a baseline scenario. The baseline is defined as the world under a set of assumptions about what would happen to the occupational pension schemes environment in the absence of this implementing technical standard. Given that the national provisions of prudential nature relevant to IORPs have not been reported before to EIOPA and published on EIOPA website, this technical standard changes the baseline scenario i.e. the situation of “no reporting”. Member States had previously reported on the relevant social and labour law applicable to cross border schemes to CEIOPS (EIOPA’s predecessor).<sup>5</sup> The IORP Directive provides some examples of what SLL is in Recital 37 and in Article 20(1). However, there is a lack of a clear definition of the scope of the SLL and its interaction with prudential law. The current IORP Directive does not provide a definition of prudential law either.

### **3: Objectives pursued**

11. In order to mitigate the problem recognised in point 2: “Problem definition” of the IA and to clarify Home Member State competencies, following objectives have been identified:
- to implement requirements of Article 20(11) of the IORP Directive
  - to create a centralised source of information at EU level on national provisions of prudential nature by providing uniform procedures, formats and templates to be used by competent authorities when transmitting and updating information to EIOPA.

---

<sup>5</sup> Social and labour law relevant to the field of occupational pensions. Available at: <https://eiopa.europa.eu/en/fixed-width/disclosure/occupational-pensions/links/index.html>

## 4: Policy options, analysis of impacts and comparison

### **Policy options with regard to the scope of reporting**

12. Two main policy options were identified:

- **Option 1:** in which Member States would be required to report to EIOPA all legal provisions determined in the ITS as being “of prudential nature” .
- **Option 2:** is to impose on Member States an obligation to report the national provisions of prudential nature implementing articles of the IORP Directive identified in CfA 4 of the EIOPA’s Advice<sup>6</sup>, i.e. those provisions that are declared to be the Home Member State’s competence for the purpose of cross-border supervision (Articles 9-10 and 12-19 of the IORP Directive) and all additional national provisions relevant to the field of occupational pension schemes recognised as provisions of prudential nature by competent authorities, if any.

### **Analysis of impacts of policy options with regard to the scope of reporting**

13. The cost and administrative burden for both options is expected to fall mostly on competent authorities (CAs) who will be responsible for reporting and providing regular updates. There will be a cost for EIOPA in relation to receiving reports from competent authorities, keeping information up-to-date and placing information on EIOPA website.
14. CAs may also encounter operational costs as an employee of a competent authority would have to ensure that the reports meet deadlines set in the ITS. Overall costs for the competent authorities are estimated to be low.
15. Some competent authorities levy fees or impose contributions on IORPs. Therefore, increased costs arising from an increased administrative burden could be passed on to IORPs who, in turn, may pass them on to members and beneficiaries (in a form of decreased benefits). However, based on the experience of CAs and that the overall costs for CAs are estimated to be low, the cost impact on stakeholder groups is not likely to be extensive.
16. The law relating to occupational pensions is already available on various national websites (official journals of Member States and/or competent authorities’ websites). Reporting parts of this law (that relates to prudential

---

<sup>6</sup> CfA 4: Prudential regulation and social and labour law in the EIOPA’s Advice to the European Commission on the review of the IORP Directive 2003/41/EC. Available at: [https://eiopa.europa.eu/fileadmin/tx\\_dam/files/consultations/consultationpapers/CP06-11/EIOPA-BOS-12-015\\_EIOPA\\_s\\_Advice\\_to\\_the\\_European\\_Commission\\_on\\_the\\_review\\_of\\_the\\_IORP\\_Directive.pdf](https://eiopa.europa.eu/fileadmin/tx_dam/files/consultations/consultationpapers/CP06-11/EIOPA-BOS-12-015_EIOPA_s_Advice_to_the_European_Commission_on_the_review_of_the_IORP_Directive.pdf)

matters) to EIOPA provides a benefit of having all Member States' prudential laws in one place (EIOPA website). The uniform presentation of national prudential rules will improve the transparency and comparability of prudential frameworks which may lead to decrease of advisory and legal costs for the industry and consequently translate into lower fees charged to members and beneficiaries or increased benefits.

### **Comparison of policy options with regard to the scope of reporting**

17. **Option 1** is less convincing option for a number of reasons:

- There is no definition of prudential law applicable to IORPs in the IORP Directive. This notion could be therefore subject to varying interpretation between Member States. Some could argue that "prudential rules" include elements of company law, insolvency law etc. Finding a borderline between prudential law and other laws involves making policy choices that touch upon distribution of powers between Member States and EU and go beyond the remit of EU implementing acts.<sup>7</sup>
- In EIOPA's view care must be taken to avoid drawing a borderline between social and labour law and prudential law in the ITS as, according to the Article 1(4) of the EIOPA Regulation EIOPA should act without prejudice to national social and labour law.
- Additionally, defining and reporting of prudential law in a wider sense (including for example company law, insolvency law) is very likely to have an indirect limitation on the Member State's competences in the area of social and labour law.
- In the stakeholders' responses to two consultations on the Call for Advice (on the review of the IORP Directive) and specifically to questions on the scope of the prudential law there was no clear indication that option 1 would be supported.<sup>8</sup>
- Recital 32 of the Omnibus I states that the technical standards that will be drafted by EIOPA "(...) *should be without prejudice to the competences of Member States with regard to prudential requirements on such institutions as provided for in Directive 2003/41/EC*".<sup>9</sup> This suggests that a very wide scope of reporting would not be compatible with Omnibus I.

18. In comparison **option 2**:

---

<sup>7</sup> Article 15 of the EIOPA Regulation.

<sup>8</sup> See the Summary of Comments on Consultation Paper: Response to the Call for Advice on the review of the IORP Directive 2003/41/EC: second consultation EIOPA-CP-11/006. Also the first consultation: EIOPA-CP-12-001. Both available at: [https://eiopa.europa.eu/fileadmin/tx\\_dam/files/consultations/consultationpapers/CP06-11/reasoned\\_feedback/4.EIOPA\\_s\\_Resolutions\\_on\\_comments\\_received.pdf](https://eiopa.europa.eu/fileadmin/tx_dam/files/consultations/consultationpapers/CP06-11/reasoned_feedback/4.EIOPA_s_Resolutions_on_comments_received.pdf) and <https://eiopa.europa.eu/consultations/consultation-papers/2011-closed-consultations/july-2011/consultation-on-draft-response-to-call-for-advice-on-the-review-of-the-iorp-directive/index.html>

<sup>9</sup> Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010

- Has a benefit of a direct link to the requirements of the IORP Directive. Also stakeholders already had the opportunity to comment on this approach when the nature of prudential law was discussed in the Call for Advice consultation. The definition of prudential law and its link to the IORP Directive was supported by stakeholders at that point.
- Due to minimum harmonisation character of the IORP Directive and varying legal framework for IORPs in EU Member States the competent authorities are best placed to determine other provisions of prudential nature relevant to IORPs in their jurisdiction.
- In option 2 there will be a cost and administrative burden which will fall on competent authorities responsible for reporting to EIOPA. However, this is assessed to be insignificant [assuming that there is no issue with translation costs] as the cost of transmitting and updating templates aligned with the provisions of the IORP Directive would be much lower than if the option 1 was chosen.
- There will be also costs for competent authorities of a legal nature in determining which parts of the relevant national legislative acts and other applicable relevant instruments comprise prudential law.
- Captures in a structured way relevant national prudential provisions, which is very useful for the purposes of presenting the information in a consistent way on the EIOPA website.

### **Comparison of positive and negative impacts of policy options 1 and 2**

Both options achieve the objectives of implementing the Article 20(11) of the IORP Directive and will promote harmonisation. However, both options differ in their positive and negative impacts.

#### **Positive impacts of adopting option 1:**

- Member States – none foreseen
- competent authorities – none foreseen
- IORPs, sponsoring undertakings, members and beneficiaries – more transparency because national provisions of all Member States are put in one place.

#### **Negative impacts of adopting option 1:**

- competent authorities – cost and complexity of monitoring, reviewing and transmitting from a wide range of legislation, some of which might be the responsibility of a different authority which would lead to additional costs due to a higher need for coordination; potential conflict with other laws which fall within the competence of Member States
- IORPs and sponsoring undertakings – potential conflict with SLL, and increased regulation costs for CAs may result in increased fees/contributions for IORPs

- members and beneficiaries – none, except increased regulation costs for CAs may impact on the costs of running an IORP, and hence members' and beneficiaries' benefits.

### **Positive impacts of adopting option 2:**

- Member States – none foreseen
- competent authorities - transparency and comparability of reported prudential law; increase of consistency and convergence of reporting
- IORPs and sponsoring undertakings – transparency and comparability of reported prudential law and better access to rules of prudential nature; possible increase of cross-border activity; reduction in legal transaction costs which may result in lower fees/increased benefits
- members and beneficiaries – transparency and comparability of reported prudential law and better access to rules of prudential nature; reduction in legal transaction costs which may result in lower fees/increased benefits.

### **Negative impacts of adopting option 2:**

- Member States – there is still a potential for conflict with e.g. company law, insolvency law and SLL but it less possible than if option 1 was chosen
- competent authorities - cost of reporting, but lower than in option 1
- IORPs and sponsoring undertakings - there is still a potential for conflict with SLL but the significance and probability of this scenario is smaller than in option 1; potential increased costs in fees/contributions but less than under option 1
- members and beneficiaries - potential increased regulation costs that could impact on members' and beneficiaries' benefits but less than under option 1.

Policy Option	Party Affected	Impact				
		Description	Type of Impact (Direct/ Indirect)	Effect (-/?/+)	Likelihood of Impact (L/M/H)	Timing of Impact (S/L/P)
<b>Option 1:</b>  To report on all requirements that would be determined in the ITS as being "prudential in nature".	<b>Members &amp; Beneficiaries</b>	Benefits indirectly affected only if CAs pass on the costs to IORPs  Transparency of prudential law	Indirect	?	M	L

	<b>IORPs and sponsoring undertakings</b>	<p>Levy fees/contributions collected by CAs may increase as a result of reporting requirements</p> <p>Transparency of prudential law</p>	Indirect	?	H	L
	<b>Competent authorities</b>	The responsibility for the initial transmission	Direct	-	H	P
		The responsibility for annual reporting and voluntary updates	Direct	-	H	P
	<b>EIOPA</b>	The reported material will be available on the website	Direct	?	H	P
<b>Option 2:</b> To report on the national provisions of prudential nature implementing articles of the IORP Directive as identified in CfA 4 of the EIOPA's Advice (Articles 9-19 of the IORP Directive excluding Art.11) and to report on additional relevant prudential provisions identified by competent authorities.	<b>Members &amp; Beneficiaries</b>	<p>Benefits indirectly affected only if CAs pass on the costs to IORPs or if the legal transaction costs are lower</p> <p>Transparency &amp; comparability of prudential law</p>	Indirect	?	L	L
	<b>IORPs and sponsoring undertakings</b>	<p>Levy fees/contributions collected by some CAs may increase but possible reduction of legal transaction costs</p> <p>Transparency &amp; comparability of prudential law</p>	Indirect	+	L	L
	<b>Competent authorities</b>	The responsibility for the initial transmission	Direct	+	H	P

		The responsibility for annual reporting and voluntary updates	Direct	+	H	P
	<b>EIOPA</b>	The reported material will be available on the website	Direct	+	H	P

Policy Option	Relevant objectives				Additional quality indicators	
	to implement requirements of Article 20(11) of the IORP Directive		to create a centralised source of information at EU level on national provisions of prudential nature by providing uniform procedures, formats and templates to be used by competent authorities when transmitting and updating information to EIOPA		sustainability	consistency
	Effectiveness (0/+ /++)	Efficiency (0/+ /++)	Effectiveness (0/+ /++)	Efficiency (0/+ /++)	(0/+ /++)	(0/+ /++)
Option 1	0	+	0	+	0	0
Option 2	++	++	++	++	++	++

19. On the above analysis the objectives pursued could be better fulfilled and the **uniformity** of reporting and presenting the information can be achieved in a more proportionate way by option 2.

20. In conclusion, the comparison of options shows that implementation of option 2 will produce overall benefits (simplicity, clarity on what is prudential law and reduced legal transaction costs). These will exceed the associated costs of reporting, resulting in a sensible improvement of the baseline scenario of “no reporting”.

After careful review of the impacts, including the social and economic impacts, EIOPA identified that the major party affected in a direct way is competent authorities. There may be some very minor indirect impacts on IORPs and members & beneficiaries in Member States. There will be also an impact on EIOPA (in collecting, analysing and making the information available on its website) which may depend on the volume and quality of the information received.



**Policy sub-options with regard to the frequency of reporting under option 2:**

21. According to Article 20(11) of the IORP Directive, Member States are required to update the information on prudential rules on a regular basis and at least every 2 years. This requirement could be implemented by either of the following ways:

- **Sub-option A** - to require the competent authorities to transmit to EIOPA information on prudential rules every two years and report to EIOPA on any "significant change" in the national provisions by way of submitting updates to EIOPA within two months since the significant change came into effect
- **Sub-option B** – not to transfer "significant change" updates to EIOPA. However, to ensure that the information on EIOPA website remains as "fresh" as possible, the competent authorities would be required to submit to EIOPA templates with national prudential rules annually instead of two year basis as stipulated by Article 20(11).

22. **Positive impacts of sub-option A** can be summarised as follows:

- the information about national provisions of prudential nature on the EIOPA website will be more up to date
- consequently the information will be more useful to stakeholders.

**Negative impacts of sub-option A** are as follows:

- transmission of information to EIOPA when significant changes occur is not explicitly foreseen in Article 20(11) in contrast to the rules on transmitting social and labour law according to Article 20(8) of the IORP Directive; consequently, a requirement to update EIOPA on "significant changes" in the national prudential rules seems to go beyond the empowerment in the IORP Directive
- lack of legal clarity due to problems with defining what constitutes a "significant change"; having a wide definition of "significant change" could result in a disproportionate burden on competent authorities and increase their compliance costs.

**Positive impacts of sub-option B** can be summarised as follows:

- higher level of legal certainty compared to option 1
- no duplication of work done at the national level with respect to publication of legislation amendments
- no disproportionate burden on competent authorities in determining what constitutes a "significant change".

**Negative impacts of sub-option B** are as follows:

- increased risk that the information about national provisions of prudential nature on the EIOPA website may become outdated
  - consequently, the information may not be useful to stakeholders.
23. Basing on the experience of CAs, EIOPA concludes that benefits of requiring competent authorities to transmit information on the “significant change” in the legislation (sub-option A) are outweighed by the costs. These costs may be passed on to IORPs and sponsoring undertakings and ultimately to members and beneficiaries. Therefore, it was concluded that sub-option B better fulfils the objectives of the ITS.

**Policy sub-options with regard to formats and templates under option 2:**

24. On reporting formats and templates, EIOPA suggests that a proportionate response would be to fill in a template with:
- a respective number, title of the section(s) and an official name of the relevant acts and other relevant instruments, if applicable
  - a hyperlink to the relevant website
25. In order to minimize costs EIOPA suggests that this template should be delivered electronically.

## **5: Monitoring and evaluation**

26. The evaluation will test if the standards are effective and efficient against the objectives specified in point 3 of the impact assessment. This could be done by e.g. conducting surveys, drafting reports etc.
27. Monitoring could include reporting on failures on e.g. providing information within deadlines, providing relevant information as identified in the standard, use of template etc.

Objective	Indicators
to implement requirements of Article 20(11) of the IORP Directive	The number of competent authorities that comply with the regulation.
to create a centralised source of information at EU level on national provisions of prudential nature by providing uniform procedures, formats and templates to be used by competent authorities when transmitting and updating information to EIOPA	Number of authorities that comply with the procedures consistently.  Number of authorities that apply the formats consistently.  Number of authorities that apply the templates consistently.

## **Annex II: Overview of Questions for Consultation**

1. What is stakeholders' view on the scope of national requirements of prudential nature that are required to be reported to EIOPA?
2. What is stakeholders' view on the procedure and frequency of reporting?
3. What is stakeholders' view on the level of detail contained in the reporting template?
4. Do you think that there should be more detailed information in the templates? If yes, please specify.
5. Do you think that competent authorities should provide details on a type of the national provisions e.g. whether it is a primary or secondary legislation, a legal act, an administrative rule, code of conduct, guidance; whether it is a binding or non-binding regulation? If yes, please specify.
6. Would it be useful to define more precisely in the ITS what 'other' provisions of prudential nature should be reported by competent authorities? If yes, please specify which provisions should be considered as 'other' provisions of prudential nature.
7. Do stakeholders agree with the costs and benefits analysis?
8. Would you consider that there are additional benefits or costs that have not been included in the costs and benefits analysis yet? If yes, please specify.
9. Are there any other policy options that should be considered in the impact assessment?
10. Would you consider useful having a mapping file of national provisions of prudential nature relevant to IORPs available on EIOPA website?