

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

**EIOPA-BoS-13-186**

**7 Nov. 2013**

**EIOPA-CP-12-005-draft ITS\_IORPs**

EIOPA would like to thank AON Hewitt, Arbeitsgemeinschaft für betriebliche Altersversorgung (ABA), Chris Barnard, Financial Services User Group (FSUG), Groupe Consultatif Actuariel Européen (GCAE), OPSG – Occupational Pensions Stakeholder Group of EIOPA and Austrian Civil Society Organization “Occupational Pension Protection Association PEKABE”.

The numbering of the paragraphs refers to Consultation Paper No. EIOPA-CP-12/005

<b>No.</b>	<b>Name</b>	<b>Reference</b>	<b>Comment</b>	<b>Resolution</b>
1.	OPSG – Occupational Pensions Stakeholder Group EIOPA	General Comment	<p>Under Article 20(11) of the IORP Directive, EIOPA are required to draft ITS to enable Member States to report their “national provisions of prudential nature relevant to IORPs, which are not covered by the reference to national SLL in Article 20(1)”. Accordingly, the ITS are primarily of interest to national competent authorities and EIOPA, and are not directly relevant to other stakeholders, as represented by the OPSG, but will nonetheless effectively impact on the operation of IORPs.</p> <p>The ITS will have a positive impact if they enable EIOPA to address any national provisions of prudential nature which do not comply with the</p>	Noted.

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		<p>requirements of the IORP Directive. They may also help to clarify which provisions of national law are included in SLL. This will enable advisors and practitioners, as well as multinational companies, to more easily identify the prudential regulation and SLL in various Member States where they have subsidiaries which will facilitate the consideration of cross border provision.</p> <p>For this positive impact to be fully effective, the full legislative text should be accessible in English. Therefore OPSG recommends considering how this result can be achieved within the EIOPA framework. We refer to recitals 36 through 39 of IORP Dir. where the objectives of the exchange of information about the rules applicable to occupational pensions are described. If there is a meaningful implementation to be made of these recitals, it seems logical that the full text of the prudential legislative body of each Member State is made available in English through EIOPA for the sake of good knowledge of the rules by the EU level Authority as well as by the practitioners at large.</p> <p>The only negative impact which we can foresee is if the costs incurred by competent authorities in reporting their national provisions of prudential nature relevant to IORPs to EIOPA every year are passed on to IORPs. However, as noted in Q 2, we prefer the proposed yearly reporting process to a bi-yearly one with</p>	<p>Noted. According to Art. 73.1 of the EIOPA Regulation, EIOPA is obliged to follow the Council Regulation No 1 determining the languages to be used by the European Economic Community (OJ L 17, 6.10.1958, p. 385).</p> <p>This Regulation determines the official languages and the working languages of the institutions and, in Article 2, states that documents which a Member State or a person subject to the jurisdiction of a Member State sends to institutions of the Community may be drafted in any one of the official languages selected by the sender.</p> <p>Therefore, the decision to translate national legislative text remains within the discretion of the national authorities/ Member States.</p> <p>The costs of translation of national prudential provisions would be disproportionate to the benefits of providing the respective provisions in English. Moreover, the translated provisions could not be relied upon where they differ from</p>
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			additional updates in case of “significant changes”	the official language version.
2.	AON Hewitt	General Comment	<p>Aon Hewitt is a leading global leader in pensions and investment consultancy services (<a href="http://www.aon.com">www.aon.com</a>). With more than 29,000 professionals in 90 countries, we partner with organisations to solve their most complex pensions and risk management challenges. We provide advice to thousands of IORPs and sponsors across Europe, including all countries that participated in EIOPA’s recent Quantitative Impact Study. We have significant experience in advising organisations on the establishment and development of cross-border IORPs.</p> <p>We disagree with the statement that “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” given our involvement in the practical establishment and geographical extension of cross-border IORPs for our multinational clients</p> <p>Therefore, although this Technical Standard may provide EIOPA and stakeholders with useful information, we do not think it will directly help with increasing the level of cross-border IORPs. EIOPA should think carefully about the level of resources it should allocate to this project, compared to other potential projects that could have a bigger impact on the level of cross-</p>	Noted. The requirement to prepare this ITS and definition of its scope is included in the IORP Directive.

			<p>border IORPs.</p> <p>We strongly believe that cross-border activity can be facilitated without detailed new legislation. We believe it could be positively encouraged by providing greater focus on the advantages that can be gained from setting up cross-border IORPs, and sharing the positive experiences from multinationals that have set up cross-border IORPs already. We believe the only clarifying legislation required is a common definition of what constitutes cross-border activity.</p> <p>Aon Hewitt has helped a number of large multinationals to set up cross-border IORPs in Europe, and a number of other companies are now actively exploring this as an option. Their primary objectives are to create financial efficiencies and improve governance for their European wide pension arrangements.</p> <p>There has been a lot of focus on the obstacles to cross-border activity. In our opinion, this is unfounded. In our experience, these obstacles are perceived rather than actual. This is evidenced by the multi-country cross-border IORPs set up by a number of companies successfully.</p> <p>We strongly believe that the obstacles to cross-border activity are perceived barriers rather than</p>	
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		<p>actual barriers. For example, with reference to the chart on page 17, we are of the the opinion that:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Differences in social and labour law are not an issue as cross-border IORPs necessarily have different sections for each country taking into account different country practices. In other words, if you are simply consolidating the financing vehicle without changing the actual local benefits delivered, then social and labour law is not an issue.;</li> <li><input type="checkbox"/> Unfavourable tax treatment is not an issue as EC tax communications and subsequent actions have removed any discriminatory treatment;</li> <li><input type="checkbox"/> Cross-border IORPs are relatively easy to set up and there is good cooperation between supervisors when approving new arrangements;</li> <li><input type="checkbox"/> There is demand for cross-border IORPs as evident by the work done by several of our largest multinational clients. We strongly believe demand would increase further if there was greater focus on the positives of having a cross-border IORP rather than the barriers to implementation;</li> <li><input type="checkbox"/> The full funding requirement is a misnomer. IORPs need to be funded in accordance with the rules of the country where the IORP is based, whereas "full funding" is</li> </ul>	<p>Noted. The impact assessment was clarified by adding an explanation that a large amount of IORPs are small institutions with fewer than 100 members.</p>
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			<p>often perceived as being fully funded on an insurance buy-out basis;</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Potential complications with administration can be managed by retaining existing administrators in each country; and</li> <li><input type="checkbox"/> Lack of buy-in from local sponsors and existing local fiduciaries can be dealt with through good communications and providing a role for local countries in the governance structure of the new plan</li> </ul> <p>We also do not think it is helpful to refer to the fact that only 80 out of 140,000 IORPs in the EU are cross-border. The figure of 140,000 is often repeated but, as this contains thousands of small IORPs with less than 100 members (including around 50,000 in Ireland with one member only), it does not give a true guide to the realistic size of the market for cross-border IORPs. We believe that multinational companies are the most likely sponsors of a cross-border IORPs. A realistic market size is likely to be in the range of 500-1,000 in the medium-term (ie representing the number of multinationals who might be able to gain some noticeable financial efficiencies or improved governance from having a cross-border IORP). Given there are 80 already, setting an objective to, say, increase this to 200 or 300 in the next 5-10 years does not seem unreasonable.</p>	
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			<p>We also think it would be helpful to quote the level of assets in the 84 cross-border IORPs. This may be a better, or alternative measure, of the size of the cross-border IORP market, rather than simply referred to the number of plans .</p> <p>Therefore, we believe EIOPA should be allocating resources to promote the benefits of cross-border pension provision to the multinational community. This is likely to result in a greater level of cross-border IORPs than the number that will be obtained directly as a result of this exercise.</p> <p>We would be happy to discuss our views in more detail. We would be delighted to arrange a meeting with you and EIOPA colleagues with some of our clients so you can find out there reasons for setting up cross-border IORPs and how they overcame perceived barriers.</p>	
3.	Arbeitsgemeinschaft für betriebliche Altersversorg	General Comment	<p>About the aba</p> <p>The aba (Arbeitsgemeinschaft für betriebliche Altersversorgung e.V.) is the German industry association representing all matters concerning occupational pensions in the private and public</p>	Noted.

		<p>sector. The aba has 1,400 members including corporate sponsors of pension schemes, IORPs, actuaries and consulting firms, employer associations and unions, as well as insurance companies, banks and investment managers. According to the aba statutes, our mission is to represent existing schemes as well as to expand coverage of occupational pensions independent of vehicle.</p> <p>General comments</p> <p>The reporting of national provisions of prudential nature relevant to occupational pension schemes (i.e. Pensionskassen und Pensionsfonds) mostly concerns the competent authorities (in Germany: Bundesanstalt für Finanzdienstleistungsaufsicht). The aba therefore expects minor, if any, repercussions for German IORPs.</p> <p>Overall the aba agrees with the options presentend as well as with the cost and benefit analysis laid out in the Consultation Paper.</p> <p>Concerning the questions about the level of detail required, the aba suggests to keep the requirements at a slightly higher level at the</p>	
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			moment, and potentially go into more detail at a later point in time.	
4.	Chris Barnard	General Comment	<p>Please note that the comments expressed herein are solely my personal views.</p> <p>Thank you for giving us the opportunity to comment on your Consultation Paper on Draft Implementing Technical Standards on reporting of national provisions of prudential nature relevant to the field of occupational pension schemes.</p> <p>Please note that I have also provided comments on the previous consultations covering the review of the IORP directive.</p>	Noted.
5.	GCAE	General Comment	<p>The questions posed in the consultation are narrow. This approach deters stakeholders from making comments that could be useful to both the Commission and EIOPA in the framing of the Implementing Technical Standard.</p> <p>By way of examples:</p> <p><input type="checkbox"/> Recital 2 on page 7 and article 1(2) refer to "national provisions of prudential nature...[comprising] provisions contained in Articles 9 to 19 of Directive 2003/41/EC...". We consider that it would be better expressed along the lines "implementing provisions contained in Articles 9 to 19", rather than "[comprising]</p>	<p>Noted.</p> <p>Noted.</p>

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			<p>provisions contained in Articles 9 to 19”</p> <p><input type="checkbox"/> The illustration of the “position of prudential law position in the legal system of most EU Member States” on page 14, could usefully include a blue circle for Trust Law – which has a significant role in the actions of those running IORPs in Ireland and the UK</p>	<p>Agreed. However, the illustration is not part of the impact assessment anymore.</p>
6.	PEKABE	General Comment	<p>Preamble</p> <p>Nowadays retirement planning has become a social reality all over Europe and governments are required to comply with the existing contract between the younger and older generation and to fairly split the financial risks among all parties.</p> <p>In addition it must be noted that due to the stressed government pension schemes throughout the EU member countries, it is the intention of the European Union to further strengthen the company pension schemes as an increasingly important income stream for retirees.</p> <p>Among all these aspects a pension system has been formed in Austria which is based on three pillars:</p> <p>Firstly - on a government pension based on contributions according to the PAYG system,</p> <p>Secondly -on occupational pension schemes</p>	<p>Noted.</p>

		<p>based on employer and employee contributions according to the funding system for which employers themselves, pension funds or, since recently, occupational pension funds are responsible.</p> <p>Thirdly -on private pensions like in the form of insurances or investment products.</p> <p>The Austrian Civil Society Organization "Occupational Pension Protection Association PEKABE",</p> <p>is making the following statements according to the second pillar of the pension scheme:</p> <p>1. Regulating the distribution of risks in occupational pension schemes</p> <p>It has become apparent that funded pension schemes are very vulnerable to financial crises and recessions. In order to guarantee old age provision these risks have to be minimalized so that pension losses can be avoided.</p> <p>The introduction of general principles concerning risk management of capital investment makes it possible to counteract these risks.</p> <p>Contrary to regulations in other European countries, Austrian pension fund beneficiaries who follow a defined contribution model, bear the sole financial investment risk of the total</p>	
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		<p>actuarial capital – which is composed of employers’ contributions as well as payroll components of employees - and responsibility has been assigned to pension funds which function as trustees. Over the last years this has caused the loss of up to one half of income for some retirees.</p> <p>This unique maladministration within the EU has to be eliminated to guarantee a minimum of security for the retirees. This could be done by explicitly imposing a generally applicable regulation – e.g. in the form of setting up a venture fund or a risk-splitting, one-third each by employers, pension fund and employees.</p> <p>2. Uniform rules of transparency</p> <p>In order to create a well- functioning internal market transparency and harmonisation of occupational pension fund regulations are critical to give the flexibility to employers and employees to actually benefit from the internal market. This A general transparency regulation is to be issued for the purpose of comparability of all existing and competing pension funds in Europe and also due to the pension beneficiaries’ right to sufficient information.</p> <p>It must ensure sufficient insight into the operations of pension funds and guarantee the pension fund beneficiaries a periodical and</p>	
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		<p>obligatory receipt of data of their retirement account.</p> <p>This includes that beneficiaries hold a mandate in the pension bodies (Supervisory Board, Advisory Councils) and receive at least annual information on the investment structure and the amount of their individual premium reserve.</p> <p>Such measures are derived from the requirements of consumer protection and they also serve to strengthen customer confidence.</p> <p><b>3. Harmonization of contract parameters</b></p> <p>The possibility of cross-border activities and the release of the European labour market result in a mix of different standards and contract terms for pension funds and pension beneficiaries which do not match with all European countries and are incorrectly applied when people work across borders.</p> <p>This may concern the retirement age, the use of mortality tables and regulations concerning the amount of interest that is charged, or the option to choose certain types of individual risk categories and exit opportunities.</p> <p><b>4. Preserving the value of pension benefits</b></p> <p>The investment income dependency on capital markets causes a lot of uncertainty for</p>	
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		<p>assessable employers and particularly for defined contribution pension beneficiaries, which does not only affect the financial management of the employer but unsettles the life planning of these affected retirees to the highest degree.</p> <p>A decade ago, a previously existing annual minimum return guarantee was abolished by law in Austria.</p> <p>Taking these facts into account, it is highly recommended to evaluate the EU intention listed in the preamble concerning a solid occupational pension.</p> <p>5. Adjustment of the taxation of pension payments</p> <p>Given the freedom of establishment, the liberalisation of services and the mobility of persons within the European Union the taxation of pension payments is of the utmost importance.</p> <p>In Austria, for example, the pension fund benefits are subject to income tax, although part of this income comes from capital gains and therefore should be taxed at the lower capital gain tax rate.</p> <p>In regard to this matter there are various types of tax models within the EU and it is about time to pave the way for appropriate adjustments.</p>	
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			<p>6. Protection of social capital</p> <p>The social capital is the actuarial capital, deriving from employers' contributions and payroll components of employees. It serves the social objective to guarantee a decent livelihood to retirees.</p> <p>In Austria, such assets are transferred to pension funds which can act on the financial market as trustees – without any obligation to cover investment losses.</p> <p>Therefore all European countries should be induced to implement appropriate measures to avoid any waste of social capital.</p>	
7.	OPSG – Occupational Pensions Stakeholder Group EIOPA	1.	<p>OPSG agrees with EIOPA's proposal to include art. 9 to 19 of IORP Dir. with the exception of art. 11 as being prudential requirements.</p> <p>A question could be raised as to whether national provisions of a prudential nature as defined in Article 1(2) should include Article 7 (Activities of an IORP) and Article 8 (Legal separation between sponsoring undertakings and IORPs) of the IORP Directive?</p> <p>OPSG wants to draw attention to section 3 of art. 1 of the ITS proposal where it states that the Member States can exclude social and labour</p>	<p>Agreed.</p> <p>The template list now contains also Articles 7 and 8.</p> <p>Noted. However, this ITS focuses on prudential provisions according to the empowerment in Art.</p>

			<p>law requirements at their own discretion. The implementation of the IORP Dir. has evidenced some problematic situations where Member States have classified almost every legislative provision related to occupational pensions as belonging to the social and labour law. The ITS should ensure there will be no blank spaces in the tables because Member State have classified the relevant regulation as belonging to social and labour law.</p>	20(11) of the IORP Dir.
8.	AON Hewitt	1.	<p>The scope appears rather narrow given the objective to provide a “structured overview” of national provisions.</p> <p>We would like to see social and labour law (“SLL”) included as part of the scope. EIOPA’s predecessor, CEIOPS, carried out a survey in April 2008 which covered certain SLL topics. As SLL is perceived as a bigger barrier to cross-border IORPs than prudential law, we think it would worthwhile EIOPA at least using this opportunity to update the information that it’s predecessor held on SLL.</p> <p>It would also be useful to have the following items included as part of the scope , as these are relevant to the creation of cross-border IORPS</p>	<p>EIOPA publishes the links to national SLL provisions on its website: <a href="https://eiopa.europa.eu/disclosure/occupational-pensions/links/index.html">https://eiopa.europa.eu/disclosure/occupational-pensions/links/index.html</a></p> <p>Under Article 15 (1) of the EIOPA Regulation, the implementing technical standard can be developed only in the area specifically set out in the IORP Directive.</p>



			<ul style="list-style-type: none"> <li><input type="checkbox"/> An overview of the local pension environment</li> <li><input type="checkbox"/> A description of the types of IORPs in each country</li> <li><input type="checkbox"/> Cross-border IORP requirements (including registration process, and rules on benefits/financing etc)</li> <li><input type="checkbox"/> High-level overview of tax issues (eg tax status of IORP: tax on investment returns; tax on benefit payments; tax on employer and employee contributions; tax on transfer values)</li> </ul> <p>The table on page 12 setting out information requirements looks remarkably short, and does not cover the type of information we typically see in country summaries of prudential law (eg those produced by professional service firms such as Aon Hewitt or European law firms for use by cross-border clients). We would recommend including the following specific items</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Authorisation procedures</li> <li><input type="checkbox"/> Security mechanisms</li> <li><input type="checkbox"/> Pension protection schemes</li> <li><input type="checkbox"/> Use of contingent assets</li> <li><input type="checkbox"/> Disclosure to members</li> <li><input type="checkbox"/> Disclosure to supervisors</li> </ul>	<p>Overview of the pension environment (different plans and products in EEA) is available on EIOPA website under: <a href="https://eiopa.europa.eu/publications/database-of-pension-plans-and-products-in-the-eea/index.html">https://eiopa.europa.eu/publications/database-of-pension-plans-and-products-in-the-eea/index.html</a>.</p> <p>Structural types of IORPs have been added as a separate category to the ITS template.</p> <p style="text-align: center;">Noted.</p> <p>Regarding the structure of the template, the respondents' views have been carefully considered and as a result the items in the template list have been amended to refer to Article 7 and 8 of the IORP Directive.</p> <p>In order not to restrict the reporting requirement and to capture all relevant information, the category "Other" was kept. Here competent authorities will report on other provisions of prudential nature i.e. those not captured in the list of the template.</p> <p>Some articles of IORP Directive were not included in the list of template items as they do not contain relevant provisions. However, if a</p>
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			<input type="checkbox"/> Roles of professional advisers, including actuaries and auditors <input type="checkbox"/> What happens when an employer leaves, or withdraws from, an IORP <input type="checkbox"/> What happens when a sponsoring employer becomes insolvent <input type="checkbox"/> Winding-up / termination of an IORP	<p>competent authority considers that its national provisions transposing any of these articles are of prudential nature, the authority shall include references to these provisions in the category "other".</p> <p>Competent authorities are required to insert in the template the "official name" of the reported instrument. Due to the differences in terminology across Member States (as recognised also by stakeholders) it was not practical to establish taxonomy of national provisions. In EIOPA's view the "official name" sufficiently enables the identification of reported provisions' nature (e.g. primary or secondary legislation).</p>
9.	Arbeitsgemeinschaft für betriebliche Altersversorg	1.	<p>What is the stakeholders' view of the scope of national requirements of prudential nature that are required to be reported to EIOPA?</p> <p>The aba agrees with EIOPA that Option 2 (to report the national provisions of prudential nature implementing articles of the IORP Directive identified in Cfa4 of the EIOPA's advice) is preferable. It is sensible to use a clear definition of what should be reported, so competent authorities in the member states will not interpret the requirements differently. We also think it is sensible to ask for any other relevant prudential regulation, so that member states can report what they deem necessary but</p>	Noted.

			which is not captured in the narrower definition.	
10.	Chris Barnard	1.	I broadly agree with the analysis of the options. I would support option 2, that the scope of national requirements of prudential nature that are required to be reported to EIOPA should cover those regulations implementing Articles 9-10 and 12-19 of the IORP Directive. This is internally consistent, and will increase transparency and comparability of reported prudential law. However, I do not think that this (alone) will have a very positive impact on the volume of cross-border activities.	Noted. The template list now contains also Art. 7 and 8.
11.	Financial Services User Group (FSUG)	1.	As predicted in many official analyses and reports from supra-national and national authorities, social-security systems in the EU are, or will come, under increasing pressure to be financially viable to secure adequate pensions for citizens. IORPs are presented as an alternative to solve the situation. Current policies support the existence and operation of private pension schemes, and call for the wider development and operation of IORPs.  In this context, given that IORPs are being viewed as one of the main vehicles to secure decent standards of living in old age, they should therefore be a primary focus of prudential regulation objectives.  As the IORP Directive states, "The prudential	Noted. The template list now contains also Art. 7 and 8. At the same time any other national provisions of a prudential nature not captured in this list are to be included under category "Other"  Current reporting perimeter is defined on the basis of IORP Directive Articles. The criterion suggested in the comment enables different interpretations by different MSs.

		<p>rules laid down in this Directive are intended both to guarantee a high degree of security for future pensioners through the imposition of stringent supervisory standards, and to clear the way for the efficient management of occupational pension schemes.”. It is important that regulatory reform ensures that IORPs fit their primary purpose. The primary purpose of IORPs is to invest the contributions of their members (and where appropriate employer/ sponsors) to secure adequate, safe and sustainable pension benefits for current and future members – to fulfill this primary purpose, IORPs should be efficiently and effectively managed. Therefore, it should be emphasized that the concept of truly effective “prudent regulation” of IORPs requires not only recognizing and understanding the prudential regulatory imperative but also the economic efficiency regulatory imperative. The prudential imperative relates to securing the existence and continued operation of the IORPs (the usual concern of prudential regulators). The economic efficiency imperative relates to ensuring that IORPs are efficiently and effectively managed with members and sponsors bearing reasonable costs and investment risk during the accumulation and pay-out (decumulation) phase. The prudential and economic efficiency imperatives are obviously closely linked. If IORPs are inefficiently managed – whether in terms of costs or risk management – this will</p>	
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			<p>clearly impact on the capital and assets available to meet current and future liabilities.</p> <p>The current scope of EIOPA Regulation proposal is rather narrow and would not allow the EIOPA to perform all tasks necessary to regulate the environment under the “prudent principles”. A wider concept of “prudent regulation” should therefore be recognized also under proposed EIOPA Regulation. Taking into account the above mentioned “prudent regulation” concept, we recommend that the scope of the national requirements that are required to be reported to EIOPA should be widened.</p> <p>The FSUG recognizes the lack of a clear definition of prudential law within the IORP Directive. However the basic principles of prudential rules clearly requires that competent authorities should be able to regulate the IORPs so that they comply with the objectives establishing their existence. The scope of the proposed Regulation should therefore also cover other areas necessary to enable regulators and other observers to realistically and objectively evaluate how well IORPs perform against their ultimate objective: to secure adequate, safe and sustainable pension benefits for future pensioners in an efficient manner, at reasonable costs and within reasonable and prudent investment risk boundaries.</p>	
12.	GCAE	1.		Partly agreed.

			<p>What is stakeholders' view on the scope of national requirements of prudential nature that are required to be reported to EIOPA?</p> <p>It is not clear why national provisions implementing articles 7 and 8 of Directive 2003/41/EC are excluded from the scope.</p>	The template list now contains also Art. 7 and 8.
13.	OPSG – Occupational Pensions Stakeholder Group EIO	2.	<p>Both the procedure and the frequency of reporting seem reasonable and proportionate. OPSG agrees with annual reporting because it will avoid the information becoming obsolete which may be the case if a two-years interval for information transfer is allowed.</p>	Noted.
14.	AON Hewitt	2.	<p>We believe that information should be continuously updated, unless of course EIOPA does not intend to use it for detailed supervisory processes..</p> <p>A requirement to update, say, every two years (or, say, within two months if there is a material change) means that EIOPA runs a risk of not having up-to-date information. Professional advisory firms are in the habit of providing updates to clients when there are changes to</p>	The IORP Directive requires MS to update the information on a regular basis and at least every 2 years. It does not entail rules that updates have to be provided if significant changes or any changes at all occur. The annual and voluntary updates provide for a flexible approach in this regard.

			<p>local legislation; and IORPs are often able to access commercial websites or databases with in-depth and up-to-date overviews of local country legislation.</p> <p>EIOPA should therefore consider whether it needs to be provided with information more or less quickly than would be expected by the IORPs themselves.</p>	
15.	Arbeitsgemeinschaft für betriebliche Altersversorg	2.	<p>What is the stakeholders' view on the procedure and frequency of reporting?</p> <p>Again, we agree with EIOPA's analysis – the higher level of certainty in suboption B (not to report "significant changes" when they occur, but to update their information annually) is preferable.</p>	Noted.
16.	Chris Barnard	2.	<p>I support the reporting procedure, which is easy to understand and efficient. I also support that competent authorities should be required to report annually; this is practicable and will ensure a high level of legal certainty.</p>	Noted.
17.	Financial Services User Group (FSUG)	2.	<p>Within the concept of reporting frequency, the FSUG supports the alternative of Sub-option A - to require the competent authorities to transmit</p>	<p>The IORP Directive requires MS to update the information on a regular basis and at least every 2 years. It does not entail rules that updates</p>

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			<p>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.</p> <p>We see this sub-option A as an efficient way for EIOPA to be able to track any significant changes in national legislature and would allow the EIOPA to better understand the incentives and other influences (political, economic, social) for such changes in national legislature.</p>	<p>have to be provided if significant changes or any changes at all occur. The annual and voluntary updates provide for a flexible approach in this regard.</p>
18.	GCAE	2.	<p>What is stakeholders' view on the procedure and frequency of reporting?</p> <p>Both the procedure and frequency of reporting seem sensible.</p>	Noted.
19.	OPSG – Occupational Pensions Stakeholder Group EIOPA	3.	<p>The level of details in the reporting template is not sufficient (see Q 4). In particular, the depth of information that should be covered is not clear, i.e. does "relevant instruments" cover just laws and regulations or also guidelines, circulars and other information provided by competent authorities or professional standards (e.g. actuarial standards which prescribe the calculation of technical provisions)?</p>	<p>Noted. Competent authorities are required to insert in the template the "official name" of the reported instrument. Due to the differences in terminology across Member States (as recognised also by stakeholders) it was not practicable to establish taxonomy of national provisions. In EIOPA's view the "official name" sufficiently enables the identification of reported provisions' nature (e.g. primary or secondary legislation).</p>



			<p>It should also be noted that prudential legislation may differ for different types of IORPs within a Member State, and the template should take this into account, as well as the fact that in some countries (for example, Luxembourg), two or more different supervisory bodies exist (see Q 4).</p>	<p>If more than one authority in a country is involved, both authorities will have to provide the information.</p> <p>Structural types of IORPs have been added as a separate category to the ITS template.</p>
20.	AON Hewitt	3.	<p>The reporting template does not cover all the areas we would expect to see (see response to Question 1).</p> <p>Given the objective to provide a “structured overview” of national provisions, we are concerned that this may not be achieved by only asking for references to local legislation, including hyperlinks. This may mean that, to a lay person, the information may be very difficult to follow, especially if the local legislation is not written in a common language (which is likely to be the case!).</p> <p>We would suggest that, for each item, a brief description of the local requirements is also provided. This should make each item easier to understand and to help with comparisons between countries, and help meet the “structured overview” objective.</p>	<p>See answer to question 1.</p>

21.	Arbeitsgemeinschaft für betriebliche Altersversorg	3.	<p>What is the stakeholders' view on the level of detail contained in the reporting template?</p> <p>The level of detail seems adequate for now, but the option to specify more detail later on should be kept open. It seems sensible to see how the current level of detail will work for those concerned, and potentially make changes at a later date.</p>	Noted.
22.	Chris Barnard	3.	<p>The level of detail contained in the reporting template is reasonable and practicable. The template is easy to read and to use.</p>	Noted.
23.	Financial Services User Group (FSUG)	3.	<p>The proposed Regulation seeks to ensure that information on national provisions of a prudential nature relevant to the field of occupational pension schemes is reported by competent authorities to EIOPA.</p> <p>FSUG support the more detailed reporting template, which would not only cover national provisions set in national legislature, but also information underpinning the minimum standards. This would allow EIOPA to track development changes in different national provision within the context of IORPs objectives and achieved performance from the point of IORPs' members.</p> <p>The level of proposed reporting details should be</p>	<p>Not agreed. Under Article 15(1) of EIOPA Regulation, the implementing technical standard can be developed only in the area specifically set out in the IORP Directive (i.e. reporting of national provisions of prudential nature).</p>

			enhanced further to allow EIOPA not only to see minimum harmonization standards, but also to see good practices imposed by national provisions and/or respective IORPs. This does not contain any policy choices and, on the other hand, allows EIOPA to see development trends and good examples for future regulatory recommendations for competent national authorities. Having such detailed information on good examples and regulatory principles from national authorities under this Regulation would strengthen the position of EIOPA as a competent supra-national regulatory authority and wide recognition of EIOPA position from national competent authorities.	
24.	GCAE	3.	<p>What is stakeholders' view on the level of detail contained in the reporting template?</p> <p>We consider that the level of detail is, at this stage, appropriate. Once Competent Authorities have responded in relation to the "other" national provisions of prudential nature, it might become clear that further detail is required in relation to those 'other' reported requirements.</p>	Noted.
25.	OPSG –	4.	Two more details would be helpful to evaluate	Partially agreed. Under Article 15(1) of EIOPA

	Occupational Pensions Stakeholder Group EIOPA		<p>the received information and therefore should be included:</p> <ul style="list-style-type: none"> <li>- Name of the type of the IORP within each line of the reporting template. Not all information provided will be relevant for all IORPs, e.g. not all regulations for pension funds will also apply for other IORPs. For stakeholders using the information published on EIOPA's homepage it will be easier to find the relevant information. A complete list of types of IORPs covered within the Directive would be helpful.</li> <li>- Depending on the depth of information requested to be transmitted to EIOPA (see Q 3), it would be helpful for the stakeholders to know which type of information is given within each line of the reporting template in order to evaluate it. A complete list of relevant instruments covered within the scope of the reporting template would solve the issue.</li> </ul>	<p>Regulation, the implementing technical standard can be developed only in the area specifically set out in the IORP Directive (i.e. reporting of national provisions of prudential nature).</p> <p>Structural types of IORPs have been added as a separate category to the ITS template.</p> <p style="text-align: center;">See answer to question 3.</p>
26.	AON Hewitt	4.	Yes – see answers to Question 1 and 3.	See answer to questions 1 and 3.
27.	Arbeitsgemeinschaft für betriebliche Altersversorgung	4.	<p>Do you think that there should be more detailed information in the templates ? If yes, please specify.</p> <p>No, not at this stage. As stated above, more detail, if needed, could still be introduced once it is clear that it is really necessary.</p>	Noted.

28.	Chris Barnard	4.	I am not averse to a greater level of detailed information in the reporting template, but would want to ensure that we achieve the objectives with a clear and consistent reporting approach.	Noted.
29.	Financial Services User Group (FSUG)	4.	<p>The FSUG does not understand the exclusion of Article 11 from the proposed Regulation and reporting templates. The FSUG thinks that transparent reporting and information disclosure to IORPs members is one of the key prudential principles that should be tracked by the proposed Regulation.</p> <p>The level of details should be wider to cover the results of IORPs operations important for evaluating their performance. The FSUG suggests covering also key information reported to IORPs members under Article 11, especially:</p> <ol style="list-style-type: none"> <li>1. costs and fee structure (fee policy),</li> <li>2. individual savings/retirement account statements,</li> <li>3. performance/returns during different time periods, including risk assessments.</li> </ol> <p>The FSUG supports more detailed reporting going beyond conventional national legislative provisions also due to the fact that particular IORPs might have implemented the national provisions in a different ways and this should be recognized in the reporting formats required by this Regulation. The level of details in a</p>	Noted. Under Article 15(1) of EIOPA Regulation, the implementing technical standard can be developed only in the area specifically set out in the IORP Directive. Since Article 11 may be covered by national social and labour law in a Member State it is not explicitly included in the list. At the same time any other national provisions of a prudential nature not captured in the template list are to be included under category "Other".

			<p>proposed template should cover not only national provisions, but also:</p> <ol style="list-style-type: none"> <li>1. typical (mainstream) implementations into the IORPs operations operating in respective Member State and</li> <li>2. significant variations from the provisions, which are still within the legal framework but differ from typical (mainstream) provisions of majority of IORPs operating in respective Member State.</li> </ol>	
30.	GCAE	4.	<p>Do you think that there should be more detailed information in the templates? If yes, please specify.</p> <p>Not at this stage. Once responses from Competent Authorities have been received, it may be apparent that further detail is desirable. Similarly, once a complete record has been constructed, greater detail might be encouraged when CAs update the information, if then desirable.</p>	Noted.
31.	OPSG – Occupational Pensions Stakeholder Group EIO	5.	<p>We consider that this would be useful, although the legal structure and the terminology may differ across Member States. Most relevant to know is the binding character or not of a measure.</p>	<p>Noted. Competent authorities are required to insert in the template the “official name” of the reported instrument. Due to the differences in terminology across Member States (as recognised also by stakeholders) it was not practicable to establish taxonomy of national provisions. In EIOPA’s view the “official name”</p>

				sufficiently enables the identification of reported provisions' nature (e.g. primary or secondary legislation).
32.	AON Hewitt	5.	Yes, given the objective to provide a "structured overview" of national provisions – the approach to prudential regulation varies for each country, so understanding the type of legislative instruments is important when trying to understand the approach in each country.	Noted. See EIOPA's response above.
33.	Arbeitsgemeinschaft für betriebliche Altersversorgung	5.	<p>Do you think that competent authorities should provide details on the type of the national provision, 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.</p> <p>It would be useful to have a bit of background information (such as the type of legislation etc.), but this needs to be balanced with the need not to impose too much on the competent authorities.</p>	Noted. See EIOPA's response above.
34.	Chris Barnard	5.	I think it would be useful if competent authorities would provide details on the nature of the national provisions e.g. primary or	Noted. See EIOPA's response above.

			secondary legislation, code of conduct, guidance etc. In particular, competent authorities should advise whether a provision is binding or non-binding.	
35.	Financial Services User Group (FSUG)	5.	<p>The FSUG supports the position that competent national authorities should clearly identify the legal power relating to national provisions. Different national provisions might have significantly different level of enforcement and therefore recognition of legal power of national provisions should be part of the reporting template.</p> <p>The FSUG recognizes the principle that the more technical the national provisions the lower legal level and legal power of national provisions. This fact should be also recognized by the proposed EIOPA Regulation.</p>	Noted. See EIOPA's response above.
36.	GCAE	5.	<p>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.</p> <p>We believe that this would be useful, although the legal structure and terminology across Member States may not be consistent and this</p>	Noted. See EIOPA's response above.



			would need to be addressed to avoid potential confusion.	
37.	OPSG – Occupational Pensions Stakeholder Group EIO	6.	We consider that it would be preferable to leave this issue to Competent Authorities and if the responses received identify some common issues across member states, consideration could be given to including further categories of provisions in future updates.	Noted.
38.	AON Hewitt	6.	Yes – there is a risk that this exercise may not capture the range of information that we would expect to see (especially given the sometimes blurred boundaries between social and labour law, prudential law, insolvency law etc). Please see our response to Q1 for a list of suggested information.	Noted. See EIOPA’s response to Q1.
39.	Arbeitsgemeinschaft für betriebliche Altersversorg	6.	<p>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.</p> <p>It seems sensible to include one relatively open question, where member states have the possibility to state anything which they deem important, but which does not fall under any of</p>	Noted.

			the more narrowly defined reporting requirements. Narrowing down the definition of what is « other prudential legislation » too early risks excluding important legislation. As suggested for several points above, this could be fine tuned at a later stage.	
40.	Chris Barnard	6.	We should focus on achieving transparency and comparability of reported prudential law implementing Articles 9-10 and 12-19 of the IORP Directive. Therefore I would prefer to leave the “other” provisions open for the moment.	Noted.
41.	Financial Services User Group (FSUG)	6.	The FSUG finds useful to define that “other” provisions of prudential nature include at least key aspects of IORPs performance allowing the competent authorities to assess and evaluate the level of achieving the main objectives of IORPs as mentioned in our answer to the Question 1.	Noted.
42.	GCAE	6.	<p>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</p> <p>This could develop over time. If EIOPA obtains information from Competent Authorities that</p>	Noted.

			suggests some common areas, then maybe this will guide future categorisation. In the first instance, EIOPA should capture all additional (other) material before deciding whether additional categorisation and detail is possible/desirable	
43.	OPSG – Occupational Pensions Stakeholder Group EIO	7.	<p>We presume that this question relates to the analysis in Section 4 of Annex 1. We would agree that the costs of the exercise should be low as the Competent Authorities should have the information readily available. The translation into English for most of the national Competent Authorities may generate costs but we would hope that this would not result in costs being passed on to IORPs or ultimately to members of IORPs [beneficiaries/consumers].</p> <p>The primary object of the development of these standards is to ensure that EIOPA has details of all of the national systems. As noted in our general comments, it will also enable multinational companies and advisors to more easily identify the prudential regulation and SLL in Member States which will facilitate the consideration of cross border provision. We do not think, however, that the development of these standards will lead to a significant increase in the number of such plans as there are other reasons why the number of cross border IORPs is low.</p>	Noted. Please also refer to EIOPA’s response to the OPSG’s General comment on language.

44.	AON Hewitt	7.	We have not studied this in detail. However, we expect that EIOPA will need a significant amount of resource to study and summarise the information in way that is easy for stakeholders to follow It should also make sure there is sufficient resource available to ensure information is kept up-to-date.	Noted
45.	Arbeitsgemeinschaft für betriebliche Altersversorg	7.	Do stakeholders agree with the costs and benefits analysis ?  The aba would be concerned about any costs which would be passed on to IORPs (and therefore to their beneficiaries).	Noted
46.	Chris Barnard	7.	Yes.	Noted.
47.	GCAE	7.	Do stakeholders agree with the costs and benefits analysis?  The scope of this question is not immediately clear to us. If it is confined to section 4 of Annex I (Impact Assessment), then we have no reason to consider that the costs – in terms of additional resource within both Competent Authorities and EIOPA and the likely modest costs passed on to IORPs and members – are unreasonable.	Noted. Estimated costs of this ITS are expected to be low. In addition and in order to accurately assess the impact on competent authorities and the clarity and feasibility of the proposed draft ITS EIOPA organised an internal test exercise within members of the EIOPA Occupational Pensions Committee (OPC). Information provided by the national competent authorities (NCA) participating in the test exercise showed that it takes ca. 3-4 working days to complete the reporting

			<p>We do not agree with section 2 (and therefore section 3) of Annex I for the reason set out below. That said, the problem definition is, in our view, unnecessary. Article 20(11) requires that this is done.</p> <p>Lack of certainty on prudential regulation is a minor 'obstacle' to the development of cross-border arrangements. We accept that it is hoped that greater transparency of prudential rules will, by exception, make social and labour law provisions clearer, but we fear that the aspired clarity may not materialise and question whether it might be more helpful to take steps to ensure that full details of social and labour law requirements (from all Member States) are collated and made available through EIOPA's website.</p> <p>We also question the scale of demand for cross-border provision. The statistic of 80+ cross-border IORPs out of a population of 140,000 is mis-leading as the vast majority of the 140,000 are one or two member arrangements in Ireland and the UK. Commission figures suggest that the number of IORPs with 100 or more members is likely to be around the 6,000 to 7,000 level. The number of sponsors for whom a cross-border</p>	<p>template by 2 NCA employees. This depends mostly on whether concordance/transposition tables already exist.</p> <p>EIOPA publishes the links to national SLL provisions on its website: <a href="https://eiopa.europa.eu/disclosure/occupational-pensions/links/index.html">https://eiopa.europa.eu/disclosure/occupational-pensions/links/index.html</a></p> <p>It has been clarified in the impact assessment that reference to 140,000 as the population for cross-border IORPS includes large number of IORPs with fewer than 100 members.</p>
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			arrangement is attractive – even at the concept level – is small; suggesting that the potential number of such arrangements is itself limited.	
48.	OPSG – Occupational Pensions Stakeholder Group EIO	8.	No	Noted.
49.	AON Hewitt	8.	See answer to Q7 and Q9.	Noted.
50.	Arbeitsgemeinschaft für betriebliche Altersversorg	8.	<p>Would you consider that there are additional benefits or costs that have not been included in the costs and benefits analysis yet ?</p> <p>As far as we can judge, it looks like all relevant costs and benefits have been considered.</p>	Noted.
51.	GCAE	8.	<p>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.</p> <p>No.</p>	Noted.
52.	OPSG – Occupational	9.	No	Noted.

Resolutions on Comments on EIOPA-CP-12/005 (Consultation Paper on Draft Implementing Technical Standards on reporting of national provisions of prudential nature relevant to the field of occupational pension schemes)

	Pensions Stakeholder Group EIO			
53.	AON Hewitt	9.	<p>EIOPA is likely to receive a vast amount of detail in this area, and will then need to summarise it in a way that is useful for stakeholders. EIOPA may want to consider doing this initially for a small number of countries in order to test “proof of concept”. This will reduce initial costs of the exercise. EIOPA can then review the processes and output of the initial exercise before rolling out to all other countries – this should then improve the overall effectiveness of the whole process, and lead to reduced costs/improved value for money.</p> <p>EIOPA may also want to consider the impact of asking a professional advisory/legal firm to carry out this exercise or subscribing to existing on-line sources containing some of this information. At the very least, EIOPA may wish to review the types of information and products available in the market, both at a European-wide level and national level.</p> <p>Firms such as Aon Hewitt already produced detailed summaries of local country regulatory systems for use by clients and can provide access to on-line databases of up-to-date local country information. Given this EIOPA may also find that the information that can be readily obtained by appointing an advisory firm with</p>	<p>Not agreed. The reporting requirements cannot be carried out initially just for a small number of countries.</p> <p>However, EIOPA has a firm intention to make improvements to the reporting process.</p> <p>In order to accurately assess the impact on competent authorities and the clarity and feasibility of the proposed draft ITS EIOPA organised an internal test exercise within members of the EIOPA Occupational Pensions Committee (OPC). Information provided by the national competent authorities (NCA) participating in the test exercise showed that it takes ca. 3-4 working days to complete the reporting template by 2 NCA employees. This depends mostly on whether concordance/transposition tables already exist.</p>

Resolutions on Comments on EIOPA-CP-12/005 (Consultation Paper on Draft Implementing Technical Standards on reporting of national provisions of prudential nature relevant to the field of occupational pension schemes)

			expertise of the different European pensions systems.	
54.	Arbeitsgemeinschaft für betriebliche Altersversorg	9.	<p>Are there any other policy options that should be considered in the impact assessment ?</p> <p>Again, as far as we can see, the impact assessment has considered all relevant policy options.</p>	Noted.
55.	GCAE	9.	<p>Are there any other policy options that should be considered in the impact assessment?</p> <p>None comes to mind.</p>	Noted.
56.	OPSG – Occupational Pensions Stakeholder Group EIO	10.	<p>Yes, undoubtedly. We refer to our general comment that it would be helpful indeed to have all the material available in English.</p>	<p>Noted. According to Art. 73.1 of the EIOPA Regulation, EIOPA is obliged to follow the Council Regulation No 1 determining the languages to be used by the European Economic Community (OJ L 17, 6.10.1958, p. 385).</p> <p>This Regulation determines the official languages and the working languages of the institutions and, in Article 2, states that documents which a Member State or a person subject to the jurisdiction of a Member State</p>



				<p>sends to institutions of the Community may be drafted in any one of the official languages selected by the sender.</p> <p>Therefore, the decision to translate national legislative text remains within the discretion of the national authorities/ Member States.</p> <p>The costs of translation of national prudential provisions would be disproportionate to the benefits of providing the respective provisions in English. Moreover, the translated provisions could not be relied upon where they differ from the official language version.</p>
57.	AON Hewitt	10.	<p>Yes – this would be helpful to actual and potential sponsors of cross-border IORPs (and their advisers) and also help to raise EIOPA’s profile (ie by providing useful information that can be viewed and used by the European pensions industry).</p> <p>We note that CEIOPS also set up a dedicated area on its website when it carried out its SLL survey in April 2008.</p>	<p>Noted.</p> <p>EIOPA is pleased to provide the information about the IORPs prudential provisions on its website and has already initiated the necessary organisational and IT development steps and procedures to achieve this objective.</p>
58.	Arbeitsgemeinschaft für betriebliche Altersversorgung	10.	<p>Would you consider useful having a mapping file of national provisions of prudential nature relevant to IORPs available on EIOPA website ?</p>	<p>Noted. See EIOPA’s response above.</p>

			Yes, having this information on the EIOPA website would increase transparency and is therefore to be welcomed.	
59.	Chris Barnard	10.	It would be useful to have a mapping file of national provisions of prudential nature relevant to IORPs available on the EIOPA website.	Noted. See EIOPA's response above.
60.	Financial Services User Group (FSUG)	10.	<p>As the EIOPA clearly presents itself as a transparent authority supporting the existence of single market, having publicly available information on all reported national provisions of prudential nature relevant to IORPs on its website is very desirable.</p> <p>At the same time, recommendations to national competent authorities to have links to this mapping file on their websites would be very appreciated and this would strengthen the transparency (limiting the information asymmetries) of regulation and support the cross-border activities of IORPs.</p>	Noted. See EIOPA's response above.
61.	GCAE	10.	<p>Would you consider useful having a mapping file of national provisions of prudential nature relevant to IORPs available on EIOPA website?</p> <p>Yes – we would also welcome further transparency with regard to social and labour</p>	Noted. See EIOPA's response above.

			<p>law. Given that all Competent Authorities are required to provide this information to EIOPA we see no reason why there should be any 'exceptions'.</p>	
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