

OPSG response to Questions for Consultation on Draft Implementing Technical Standards

General comment:

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.

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 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.

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.

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 additional updates in case of "significant changes"

1. What is stakeholders' view on the scope of national requirements of prudential nature that are required to be reported to EIOPA?

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.

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?

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 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.

2. What is stakeholders' view on the procedure and frequency of reporting?

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.

3. What is stakeholders' view on the level of detail contained in the reporting template?

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)?

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).

4. Do you think that there should be more detailed information in the templates? If yes, please specify.

Two more details would be helpful to evaluate the received information and therefore should be included:

- 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.
- 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.

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.

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.

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.

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.

7. Do stakeholders agree with the costs and benefits analysis?

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].

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.

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.

No

9. Are there any other policy options that should be considered in the impact assessment?

No

10. Would you consider useful having a mapping file of national provisions of prudential nature relevant to IORPs available on EIOPA website?

Yes, undoubtedly. We refer to our general comment that it would be helpful indeed to have all the material available in English.