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Implementation of the IORP II Directive

Position Paper by the Occupational Pensions Stakeholder Group

Executive Summary

The implementation of the new IORP Directive does not always represent an easy task for EEA States. Some provisions still appear unclear, such as the scope of the information requirements contained in the Pension Benefit Statement (PBS); some other provisions like the ones on cross border activities of IORPs seem to improve these initiatives, but some clarifications are still needed: with this regard, the OPSG made also some proposals aimed at making some procedures easier and more standardized, in order to avoid uncertainty or unjustified roadblocks from some NSAs. Even the role of EIOPA seem to need some clarification. Some provisions of the Directive where the Authority is explicitly called in (few, actually) were analyzed by the OPSG in order to underline that those ones be properly consistent with its own mandate and tasks provided by the Regulation (EU) 1094/2010. Finally, the last part of the paper will include an appendix, where peculiar issues encountered in some Countries in implementing the directive will be described.

Introduction

The new Directive (EU) 2016/2341 on the activities and supervision of institutions for occupational retirement provision (IORPs), after been approved by the European Parliament on 24 November 2016, was published on the Official Journal of the EU the 14th December 2016.

The present feedback paper was prepared by EIOPA Occupational Pensions Stakeholder Group (OPSG) as a follow up of a specific request of the Authority. With this regard, the said original request included in the title, also the wording "consumer protection". However, after several exchanges and discussions among the OPSG members, it was concluded that the new IORP Directive was mainly -if not completely- drawn up with the purpose of improving the protection of IORPs members and beneficiaries, and its provisions are therefore referred -directly or indirectly- to this matter. In accordance with this premise, the OPSG concluded that it was not worth it adding a specific paragraph dedicated to "consumer protection", as its comments on the implementation of the new Directive will subsequently make reference to protection of members and beneficiaries, too.

Moreover, the paper needs to be read in conjunction with the following OPSG papers on closely connected subjects:

- Position paper on EIOPA's Opinion to EU Institutions on a Common Framework for Risk Assessment and Transparency for IORPs, adopted on 13 January 2017;
- Feedback Statement on the Budapest Protocol, approved on 30 November 2016

The conclusions of these papers have not been repeated here but are fully supported.

This submission was prepared by a working group, has been discussed in an OPSG plenary meeting and approved unanimously by the OPSG on 2 May 2018. It represents the initial views of the OPSG. Further advice may be provided to EIOPA depending on how the Directive is implemented in practice by Member States. That said, the appendix of the present paper will expound the main challenges currently faced in implementing the Directive in some EEA states. Indeed, some national OPSG representatives considered it suitable to highlight the peculiar issues encountered in their Countries in implementing the directive.

Role of EIOPA

The role of EIOPA in relation to the implementation of IORP II was a subject of significant discussion during the trilogue negotiations and it is the OPSG's view that EIOPA should, and we trust it will, respect the relatively constrained role which EIOPA has been granted within the final text, reflecting the legislative and democratic process on a European level.

The overall objective of EIOPA and the two other ESAs is to sustainably reinforce the stability of and effectiveness of the financial system throughout the EU. The financial systems are extremely important for a well-functioning modern society and its main stakeholders, in particular consumers. In the case of IORPs their members and beneficiaries can to a limited extent be seen in the role of a consumer. Generally, the members and beneficiaries are the stakeholder group, which has the highest need of increased protection and support from best practices wherever they reside within EU.

The relatively few references made to EIOPA in the IORP II directive does not imply that EIOPA should not comply with its overall mandate. The mandate gives clear guidance that EIOPA should ensure and promote a closer cooperation and exchange of information among national supervisors, in the directive referred to as National Competent Authorities (NCAs) or competent authorities. According to the mandate, EIOPA should facilitate the adoption of EU solutions to cross-border problems and advance the coherent interpretation and application of rules. The mandate gives EIOPA and the other ESAs a special responsibility to prepare uniform standards and ensure supervisory convergence and coordination and to work for an ultimate single rule book applicable to all EU Member States (where in light of differing labor law, social law and tax law reasonable) and thus contribute to the functioning of the Single Market.

Although the IORP II directive does not repeat the above important role and functions defined for EIOPA, the mandate initially given to EIOPA in respect of IORPs should not be neglected when the directive is implemented. In the opinion of the OPSG, EIOPA should therefore work for fulfilling its mandate in respect of IORPs, in the same way as the 3 ESAs work for the same objectives covering financial institutions or financial markets. As an example, the OPSG is well aware that publication of guidelines belongs to the scope of activities of the Authority. Moreover, the OPSG agrees on the potential added value of EIOPA in providing information or advise, if specifically requested.

More in general, the important work regarding establishing best practices and promoting harmonization and convergence of national regulation to a common single rule book for IORPs (where in light of differing labor law, social law and tax law reasonable) should be the overall long-term target of EIOPA, as mandated. From their side, Stakeholder Groups of the ESAs should assist in directing and guiding the ESAs in the wanted direction and be a promotor for harmonized best practice regulation and technical rules throughout EU, a work which OPSG fully supports.

Having said that, the OPSG considers that no further mandates beyond the ones listed in the Regulation (EU) 1094/2010 should be granted to the Authority. And, with regard to the present directive, the OPSG notes that the specific references to EIOPA within IORP II, despite sometimes important, are relatively few and are as follows:

Recital 5

The way in which IORPs are organised and regulated varies significantly between Member States. Both IORPs and life insurance undertakings manage occupational pension schemes. It is not appropriate, therefore, to adopt a 'one-size-fits-all' approach to IORPs. The Commission and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council should take account of the various traditions of the Member States in their activities and should act without prejudice to national social and labour law in determining the organisation of IORPs.

Recital 39

In order to facilitate coordination of supervisory practices, EIOPA can request information from the competent authorities in accordance with the powers conferred on it by Regulation (EU) No 1094/2010. Furthermore, in the event of a whole or partial cross-border transfer of a pension scheme, where there is a disagreement between the competent authorities concerned, it should be possible for EIOPA to carry out mediation.

EIOPA's powers in this regard are discussed below in the chapter on "Cross Border Transfers".

Recital 75

In order to ensure the smooth functioning of the internal market for occupational retirement provision organized on a Union scale, the Commission should, after consulting EIOPA, review and report on the application of this Directive and should submit that report to the European Parliament and to the Council by 13 January 2023.

The OPSG notes the defined time frame for a review of the Directive and the implicit pause in any legislative changes should be respected by all parties.

Article 9.3

The information from the register shall be communicated to EIOPA which shall publish it on its website.

There are no OPSG comments for this recital.

Article 13

In the case of a disagreement about the procedure or content of an action or inaction of the competent authority of the home Member State of the transferring or receiving IORP, including the decision to authorize or refuse a cross-border transfer, EIOPA may carry out non-binding mediation in accordance with point (c) of the second paragraph of Article 31 of Regulation EU 1094/2010 upon request of either of the competent authorities or on its own initiative.

EIOPA's role in this regard is discussed below in the chapter on "Cross Border Transfers".

Article 48.5

Any decision to prohibit or restrict the activities of an IORP shall contain detailed reasons and be notified to the IORP in question. That decision shall also be notified to EIOPA which shall communicate it to all competent authorities in the case of cross-border activity as referred to in Article 11.

The OPSG would interpret EIOPA's role in this regards as relating solely to cross-border activity and that EIOPA would have no direct role in relation to prohibited or restricted IORPs which operate on a single country basis.

Article 56.1

Articles 52 and 53 shall not prevent a competent authority from transmitting information to the following entities for the purposes of the exercise of their respective tasks:

(a) central banks and other bodies with a similar function in their capacity as monetary authorities;

(b) other public authorities responsible for overseeing payment systems, where appropriate;

(c) the European Systemic Risk Board, EIOPA, the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council (1) and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council.

There are no OPSG comments for this recital.

Article 59 1-2.

1. ***Member States shall report to EIOPA their national provisions of prudential nature relevant to the field of occupational pension schemes, which are not covered by national social and labour law on the organisation of pension systems as referred in Article 11(1).***
2. ***Member States shall update that information on a regular basis and at least every two years and EIOPA shall make that information available on its website.***

There are no OPSG comments for this recital.

Article 60 3-4.

3. ***The competent authorities of the Member States shall cooperate with EIOPA for the purposes of this Directive, in accordance with Regulation (EU) No 1094/2010 and shall without delay provide EIOPA with all information necessary to carry out its duties under this Directive and under Regulation (EU) No 1094/2010, in accordance with Article 35 of that Regulation.***
4. ***Each Member State shall inform the Commission and EIOPA of any major difficulties to which the application of this Directive gives rise. The Commission, EIOPA and the competent authorities of the Member States concerned shall examine such difficulties as quickly as possible in order to find an appropriate solution.***

The OPSG believes it may have a role in assisting EIOPA in the identification and analysis of potential difficulties in implementation and some initial thoughts for certain specific Member States are dealt with in the Appendix below.

Cross Border Transfers

Firstly, the OPSG notes the centrality of the facilitation of cross-border activity within IORP II. The Stakeholder Group would particularly note that any rules and regulations should reflect the objectives of IORP II in "facilitating the cross-border activity of IORPs and the cross-border transfer of pension schemes" as described in recital 11 of the directive. Such cross-border activity would assist in meeting the aim to "further improve complementary private retirement savings such as occupational pension schemes" (recital 8).

The main obstacles for cross border transfers - except for specific points concerning the respective sponsor companies - are linked to the differences in fiscal and para fiscal treatment and the differences in Social and Labour law. The latter may lead to a mistrust of the social partners to organizing pension funding in a different Member State. The new IORP II directive introduces in Article 12 new rules for cross border transfers. These rules provide a framework to facilitate cross border transfers and is expected to provide more legal certainty to execute these transfers. Greater certainty is to be welcomed and we expect that this aspect of IORP II will facilitate transfers in future. Additionally, in Art. 14(3) the directive partially addresses concerns of different treatment of under-funding between purely domestic and cross-border IORPs.

The fully funded requirement at the date of transfer has not been removed (Art. 12.7.d). The OPSG is definitely supportive of the aim to be fully funded at all times. In case of underfunding it is foreseen that pension institutions work according to a recovery plan that fulfills any requirement from national social and labor law and is accepted by the National Competent Authority. This change may help to encourage the development of more cross-border IORPs.

There is indeed some optimism among practitioners that IORP II will encourage more cross-border transfers and attract more sponsors and IORPs to at least consider centralization initiatives, although at this stage, it is difficult to say whether the new IORP II requirement will in reality either encourage or discourage further cross-border activities. The new Directive provides in Article 12 additional clarifications about applicable procedures, documents to be provided and timelines, all of which should facilitate transfers. One of the new provisions is the requirement of a prior approval by majority of members and beneficiaries, or by their representatives. This latter requirement is formalizing what has already been the case in practice in the past. It is first and foremost these stakeholders supported by their advisors who are in the OPSG's view best positioned to judge if "the long term interests of the members and beneficiaries of the receiving IORP and the transferred part of the scheme are adequately protected during and after the transfer". (Art 12.7.c). The Stakeholder Group is certain that the competent authorities will continue looking very closely at how sponsors and IORPs engage with members and beneficiaries or their representatives as well as at which commitments they undertake in order to obtain approval in each specific case. Each case tends to be different and the provisions of the directive seem flexible enough to allow national competent authorities to judge it on its own merits. The OPSG would hope though that such judgement will not create additional obstacles for cross-border transfers. Such judgement should be focused on the interests of the members and beneficiaries and not be used as an excuse not to allow transfers and keep those pension arrangements within the border of the Member State.

In Article 14(3) the new directive introduces modified provisions for situations whenever cross-border activities experience under-funding: “the competent authority of the home Member State shall promptly intervene and require the IORP to immediately draw up appropriate measures and implement them without delay in a way that members and beneficiaries are adequately protected”. This provision has been introduced to address concerns of unequal treatment between domestic and cross-border IORPs in situations of under-funding. The new text leaves it up to national supervisory authorities to decide how to handle under-funding of cross-border activities.

The OPSG would note that in many cases Social and Labour law and/or prudential law of Member States have existing rules and regulations on transfer of assets between different funding vehicles (IORP’s, Insurance companies). The requirement introduced by IORP II on cross border transfers comes in addition to these existing rules and regulations and, if not implemented carefully, can lead to confusion, contradiction and even legal uncertainty.

The new procedure on cross border transfers will also require the Budapest protocol to be adapted. A new protocol is imminent now that the new IORP II directive has been voted. As noted above, the OPSG has already provided input to EIOPA as regards this protocol and it is not the purpose of this paper to repeat the detailed points made so recently.

However, in addition to the detailed points already made, the OPSG would stress that Member States’ Competent Authorities should not be in allowed to take a position that, not respecting the deadlines, leads to long delays in the process of establishing a cross-border IORP section. This is an experience that a number of the individual members of the OPSG have had in practice where the Home Member State has delayed cross-border approval by making continued requests for additional information. EIOPA’s involvement in removing potential ‘roadblocks’ by invoking its powers under Article 13.7a would be welcomed in certain circumstances. However, the OPSG would suggest that how EIOPA would act in the case of disagreement between the authorities and EIOPA’s procedures be set down within the new protocol or elsewhere to assist stakeholders seeking to undertake cross-border activity. The OPSG would hope that the very existence of such procedures would, in themselves, act as a sufficient deterrent against deliberate and unjustified delays or refusals to allow cross-border activity so that EIOPA’s formal interventions or the last resort of legal action as foreseen in Article 12.13 would not be required in practice or be an exceptional action.

The OPSG would also welcome the establishment of a procedure to be followed by both authorities in case of non-compliance with the social and labor law, and a procedure in case when social and labor law of the host member state is conflicting with the prudential law of the home member state.

The OPSG would further stress that the competences of the authorities of the receiving and the transferring IORP are described in IORP II. No rules and regulations should go beyond what has been politically agreed in IORP II. As noted above, any rules and regulations should reflect one of the objectives of IORP II: to facilitate cross border transfers.

The Stakeholder Group would note that the authorization for a cross border activity and a cross border transfer is provided by the competent authority of the home country of the receiving IORP. This authority thus carries the ultimate responsibility for the approval.

It is first and foremost the stakeholders supported by their advisors who have to judge if “the long term interests of the members and beneficiaries of the receiving IORP and the transferred part of the scheme are adequately protected during and after the transfer”. It is up to them to make the assessment and to decide which elements to take into consideration depending on the complexity and specifications of the different pension provisions involved.

Pension Benefit Statement

The OPSG welcomes the establishment of the Pension Benefit Statement "PBS". It would note, however, some areas where there may be some practical difficulties as regards to the delivery and implementation of the PBS.

Firstly, it is noted that one of the major practical advances is that a PBS needs to be sent at least annually to all members of the IORP. In certain countries, there was no requirement for such a statement to be sent to deferred members who had the left their relevant employment prior to retirement. In many countries, neither was there a legal requirement for the administrators of IORPs to seek to maintain their databases with the locations or contact details of such deferred members. There may thus be a practical issue in that the IORP may not know the locations of the individual members. There is no point in producing a PBS if it cannot be delivered. The OPSG would trust that the NSA's would be vigilant in ensuring that every appropriate effort was made by the IORPs in their jurisdictions to ensure effective delivery.

The OPSG is of the opinion that the Pension Benefit Statement should provide members and beneficiaries with relevant and useful information. However, in the case of defined contribution (DC) pension scheme with voluntary contribution from sponsoring undertakings, where future outcome, among others, depends on the fund's rate of return, the required information in article 39 paragraph 1.(d) could be misleading for the member. In this case, the projected pension benefit comprises too many variable elements such as amount of sponsor's contribution, future rate of return, amount and period of state incentives, if there any. From the sponsoring undertakings perspective, this would imply that it is ready to continue with the same payments into pension scheme in the future, although the dynamic and amount of contributions are voluntary and depend, among other things on its business results.

The OPSG fully supports the general idea of providing cost transparency to members and beneficiaries of an IORP. However, when it comes to a concrete implementation, a too dogmatic interpretation of Article 39, 1st paragraph, (g) could turn out to be a practically a difficult and costly issue for certain IORPs in some member states, without providing any additional advantage for beneficiaries. Especially costs that are not born by the members (resp. beneficiaries), but by the employer instead, are often difficult to break down to each single member. They are often pure fixed costs, which would have to be carried in the same amount relatively independent e.g. from the number of beneficiaries. Furthermore, this breakdown would not provide any useful additional information for the single beneficiary since members do not bear these costs. So, in such cases it should be sufficient just to publish the aggregate amount of such cost blocks. Also, in cases where there is an insurance tariff behind a pension obligation, where the relation between contributions and benefits is calculated based on actuarial methods, it should be sufficient to publish the cost-ratio (in the tariff), that is applied in the actuarial calculation, since this information already contains all the costs, that are borne by the party, who pays the respective contributions.

A PBS would need to be kept simple and recognise differences between DB and DC schemes for example. Only relevant information should be included depending on the nature of the IORP and not just simply to enable comparison from one scheme to another.

Appendix – Specific Member State Issues

As mentioned in the introduction of the present paper, this appendix was filled in by those national OPSG representatives who care of highlighting the peculiar issues encountered in their Countries in implementing the directive. Therefore, not all the MS will be listed in the present appendix, as this latter is exclusively based on the discretion of the OPSG members, and obviously limited to the Countries represented in the Group. Finally, their reporting does not necessary reflect their own opinions, but rather the current discussions taking place in their Countries.

In the light of the above, the following (potential) issues in relation to the implementation of IORP II for specific Member States have been noted:

Austria:

· Some aspects of the governance requirements are new for Austrian IORPs, esp. regarding outsourcing and remuneration. Hitherto the Austrian law did not provide for specific rules on theses aspects.

· The new governance requirements will be difficult for small schemes and it is expected that they will go out of business sooner or later.

· The new fit & proper rules will bring about more consistency in the current regime which is rather divers.

· Hitherto the risk management is restricted to the pension scheme and did not cover the IORP itself. This will change with IORP II.

· There is a big concern that the own-risk assessment will lead to risk-based capital requirements, a kind of solvency II for IORPs.

· Currently there is much gold-plating in Austria regarding the investment rules. There is a big concern that this will be a disadvantage for Austrian IORPs in the rising competition in the internal market.

· Regarding the new information provisions, it is generally unclear what is meant if the Directive states that IORPs must "make available" certain information.

· Since the access to information on costs are currently highly insufficient for beneficiaries it will be important and critical to ensure that the future Pension Benefit Statement will include detailed information on costs. The role of the National Authority must be strengthened in this regard to monitor strictly DC IORP's Cost structure.

· The content of Art. 48 Section 4 IORP II seems unclear against the background of the legal situation in Austrian law. In Austria the CA can issue an administrative ruling without any punitive character in order to alter the conduct of the IORP *pro futuro*. Since there is hardly any on-site inspection without any prudential complaints such rulings are frequently issued. The publication of these rulings could alarm members and beneficiaries even there is often no cause at all for this. Hence the question is whether such rulings without punitive character are subject to the publication requirement according to Art. 48 Sec. 4. Furthermore, there is a competition matter since there is no similar publication requirement for insurance companies

Belgium

At the current state of implementation, we see the following issues:

- It will be difficult to define a remuneration policy as most people running the IORP are on the payroll of the sponsor.
- Communication (pension benefit statement) is part of social and labour law, applicable to all pension arrangements, irrespective of the way of funding. Changing legislation based on the IORP II directive will also impact pension plans not funded through IORPs.

Croatia

- Pension fund members spend quite a long period in pension funds and it is very likely there will be changes in their personal data. As they do not have any legal obligation to send information to pension funds' administrator which consequently does not have any tool to update members' personal data without engagement of members, the records about members are not accurate as they should be. Therefore it is not appropriate to force pension funds to send the PBS if we know that their ability to collect these data is limited. In some years, Croatian voluntary pension funds had around 30% of inaccurate addresses in their data base. During changes in the Pension fund Act in 2014 this provision was changed and the new wording defines that pension fund management company has to "make available" the annual statements to its members on web page. Now all members have a possibility to get their turnover and balance about their pension account in printable format, accessible with username and password on web page of their pension fund. Those members who do not have access to web page can ask for a paper version, which will be sent to them, but in that case, administrator can check address.

- The second issue is about ESG investments. So far Croatian capital market has not had any experience with such type of investments. The article 19 of IORP II Directive, gives possibility to an IORP to consider such an investment in its investment decision making process. If an IORP takes in consideration environmental, social and governance factors in its investment process and has a proper risk management system for measuring and controlling related risks it will face certain limitation on currency exposure. The voluntary pension fund act prescribes that pension funds can invest up to 30% of investment in financial instruments which are in different currencies from currencies in which pensions are paid. Hence their willingness to invest in ESG investments might be limited especially if they are now near this 30% with current investments. Currency risk can be manged by derivatives but they should weigh pros and cons between ESG factors and efficient use of derivatives.

Germany

- Many German IORPs still have to value their Technical Provisions with a fixed discount rate, which is defined and set in the underlying insurance tariff. We can imagine, that this might cause practical difficulties with regard to bringing this in line with the market oriented valuation approach for Technical Provisions as it is described in Article 13 of the guideline.

- Many German IORPs are currently not allowed to have (temporary) not sufficient assets to cover the liabilities as described in Article 14. Hence, in this cases German law today does not foresee any kind of recovery plan. This would have to be developed further in Germany.

- In many cases it will be difficult for a German IORP to define a remuneration policy, when this IORP mainly belongs to only one sponsor company. Because in this case persons running the IORP or having key functions are usually on the payroll of the sponsor company and hence fall under the remuneration policy of the sponsor company, which in most cases (due to the nature of the operative business of the sponsor) might not take the principles mentioned in Article 23 into account.

- The situation described in Article 24, 3rd paragraph, that one person carries out a certain key function for several different IORPs belonging to the sphere of one sponsor company and also for the sponsor company itself, will be very often the case in Germany. Since for all these cases an extra permission of the local regulatory authority will be needed, this will cause a lot of effort and bureaucracy in practice!

- We believe, that it will be a challenge to develop sound risk management practices for environmental and social risks as prescribed in Article 25. This holds also for the integration of these risks, incl. the risks resulting out of climate change, into the Own Risk Assessment (Article 28).

- With regard to Article 33 many German IORPs keep a certain part of their assets (certain certificates/documents) in security containers (which have, of course to meet certain strictly defined security criteria). So for such assets there can be no depositary appointed. It will be important, that – in line with Article 33 of the regulation – the German supervisory authority will not require the appointment of a depositary in such cases in order to allow such business to be continued.

- In Germany requirements for a statement of investment principles (Article 44 (b)) largely would have to be developed.

Ireland:

- the requirement to consider inter-generational solidarity will be difficult to action in practice within Ireland's legislative structure and given that many DB IORPs are closed to new members and future accrual.

Italy:

The rules governing the Italian pension funds are largely in line with the provisions of the IORP II directive. In particular, we already comply with the provisions regarding the information to give to prospective members, members, and the PBS: we only expect minor adjustments to the current framework to fully comply with the IORP II.

Some changes will be needed in order to comply with the rules on governance, and this is particularly true for closed-ended pension funds.

As regards to open-ended pension funds, this type of funds can rely on a dedicated governance structure established within the governance structure of the provider (asset management companies, banks, insurance companies and investment companies).

The Netherlands:

The Netherlands have been trying in recent years to provide less information to members, to avoid overload, and issue Uniform Pension Overview (UPO) to facilitate comparison across pension plans. In addition, the legal requirements have recently been amended to enable layered communication: in 3 degrees from simple icons to detailed texts. The IORP II requirement for a Pension Benefit Statement runs counter to this, requiring too much information in one single document. The Dutch government is considering options, such as extending scope of the current UPO or providing layered information (e.g. where provided electronically) with some of the more-detailed requirements from the IORP II Directive shown at 'deeper' levels. As a matter of fact, Dutch pension funds are already required to use layered communication – as also mentioned in the OPSG Consumer Trends Report. From the perspective of effective communication, this is considered an improvement, since participants and beneficiaries can more easily understand the main messages.

Some other items that are discussed among Dutch pension funds are the difficulty of implementing a full fledged (three levels of defense) risk management, as well as the administrative burden that may come from IORP II (at the expense of the pension result, in the end). There are also concerns that pension funds boards will be drowned in all sorts of regulatory requirements and lose sight of their own strategic and managerial issues, that is, run their plans properly.

Norway:

The IORP II directive states that EIOPA should take account of various traditions in various member states and should act without prejudice to national social and labour law. Considering this statement, implementing some of the regulations in the IORP II directive may be challenging for Norwegian IORPs.:

1. A large number of Norwegian IORPs are traditionally established by corporates and managed by the sponsor with staff employed by the sponsor. Separating the IORP management from the sponsor may create practical difficulties and increased cost for many IORPs.

2. Members and beneficiaries have generally a low influence on composition of the Advisory Board and consequently on governance principles and investment policies of the IORP. The risk profile and the resulting expected returns of the IORP is consequently defined by the sponsor, which is not the intention of IORP II.

3. The transparency in Norwegian IORPs are normally low, and the information given to members and beneficiaries are kept at a minimum. Easy access to relevant information for members and beneficiaries is challenging today. The IORP II directive is advocating a higher level of transparency which may require extensive investments in e.g. digital communication with stakeholders.

4. Risk assessments available to members and beneficiaries as required by the IORP II are non-existent in Norwegian IORPs. Some elements of the proposed Pension Benefit Statement (PBI) may be difficult to comply with without a positive attitude to improved transparency. The relation between the IORP achieved return on funds, the return needed to keep the future benefit promises and the annual increase of the pension benefit is already today difficult to explain to members and beneficiaries in a transparent way.

5. The triangular contract Employee, Employer, IORP is not well defined or communicated, and leaves the beneficiaries with uncertainty regarding their rights, unless defined in national social and labour law. This applies specially to the insurance part of the pension scheme and the yearly

adjustments of pension benefits in relation to indexation (keeping up with standard of living in the country). Bringing this to a higher standard meeting IORP II requirements of information and transparency could be a challenge.

A general challenge is connected to following up the implementation of new regulations, local or supranational. An example may illustrate this point. Although Norwegian NCA regulation for a number of years have stated that annual reports for IORPs shall be available on internet, covering at least the last five years, most IORPs are not complying with this requirement. Handling non-compliance with EU and national regulation is an area where EIOPA and the national NCAs should join forces.

Sweden:

Sweden – collective agreements as a base for occupational pension and IORP 2

Swedish labour law gives a framework for the social partners to agree on collective agreements to a large extent in comparison with most other countries. Most of the labour regulation in Sweden is since the 60ies regulated in agreements concluded between the principal employers' and employees' organisations. This also applies to occupational pension plans.[1] The social partner's principal organisations have created a nation-wide system for occupational pensions based on collective agreements covering almost 90 % of the work-force.[2]

The text of the IORP II Directive does not regulate the form or content of pension schemes, nor does it affect the role of social partners in the management of IORPs. Accordingly, the directive accommodates national models for the occupational pensions market. This type of pension plans has proven to work well over a long period of time. The Swedish Government has not yet submitted any proposal for implementation of the Directive. In the light of analysis of the directive published so far in Sweden, the directive may be implemented without adversely affecting collectively agreed occupational pension plans or the development of such plans.

It is however important that measures taken to implement the directive and the continued legal development takes into account all aspects regarding the functioning of collectively agreed occupational pension systems.

A collectively agreed occupational pension plan in Sweden usually provides for retirement benefits paid by reference to reach retirement, but also for supplementary ancillary benefits, such as payments on death, disability or sickness etc. The plans are comprehensive in the sense that they provide for individual rights, (as for example the level of premiums to be paid, pension age, acquisition and preservation rights, out-payment alternatives etc.), as well as regulating the conditions for distribution, (including information and advice to both employers and employees), administration, (e.g. how premiums are paid, by whom and how information is distributed), and rules for management of the plan itself, (e.g. how the social partners should relate to each other managing the plan, including inter alia dispute resolution outside the judiciary). From a judicial point

[1] A general policy for Sweden as a member-state of the EU is to maintain and develop the system of collective agreements in line with the development of EU-legislation. Swedish governments and the social partners have, since Sweden became a member of the EU in 1995, also spent a lot of effort to achieve EU-legislation, which is not interfering, but designed to fit with the rights of the social partners to conclude collective agreements according to the Swedish legal system. It rarely happens that collective agreements are not in accordance with EU-legislation or hinder the development of the internal market or the implementation of EU-legislation. This is of course due to the fact, that labour law falls within the competencies of the member-states to regulate, but also because EU-legislation gives the member-states the opportunity to let the social partners agree on collective agreements, instead of implementing EU-law by national legislation. To give the social partners room for negotiating collective agreements within the national legal framework is common within the area of social and labour law. Most of the European social and labour law issues are also prepared within the Treaty's determined social dialogue, which foresee the involvement of social partners. When it comes to occupational pensions, also financial EU legislation, outside the scope of the social dialogue interferes with areas traditionally regulated by the social partners through collective agreements in Sweden.

[2] There are altogether four main collectively agreed occupational pension plans with the same basic features, covering respectively; government employees, municipality and county employees, salaried employees in the private sector and workers.

of view, each plan constitutes a system of agreements between beneficiaries, members, sponsoring undertakings, employees' and employers' organisations, and, providers of administrative and financial services, all kept together by a collective agreement constituting the pension plan, serving as a base and constitution of the system.

For the management of savings, insurance companies on the market are selected through tender procedures which are carried out by the social partners in cooperation. A number of tendered insurance companies are involved in providing financial services within the scope of an occupational pension plan. They also have different tasks. Some of them are managing future benefits related to premiums paid by reference to retirement others are managing supplementary benefits.

UK:

Assuming that despite Brexit IORP II is passed into UK law in practice, the following issues could arise:

- the requirement to appoint an internal auditor will be regarded as a significant burden by smaller schemes who may struggle to apply this aspect of the Directive in a meaningful way

- depending on the nature of Brexit, EIOPA's continued legislatively required involvement in cross-border transfers may be difficult to implement, though in practice this may not be a problem in practice given that few cross-border transfers involving the UK are currently being contemplated

- the requirement to consider inter-generational solidarity will be difficult to action in practice within the UK's legislative structure and given that many DB IORPs are closed to new members and future accrual."