**Annex I: Impact assessment and cost benefit analysis**

**1: Procedural issues and consultation of interested parties**

1. In order to fulfil EIOPA’s obligation to prepare a draft implementing technical standards (ITS) as required by Article 20(11) of the IORP Directive, EIOPA’s Occupational Pensions Committee (OPC) established in March 2012 a subgroup whose task was to prepare draft ITS.
2. According to Article 15(1) second paragraph of the EIOPA Regulation, the Authority shall analyse the potential related costs and benefits of the ITS, unless such analyses are disproportionate in relation to the scope and impact of the draft ITS concerned or in relation to the particular urgency of the matter.
3. The impact assessment (IA) aims to provide a reader with an overview of findings with regard to the problem definition, options identified to remove the problem and their potential impacts.
4. Stakeholders’ responses to the public consultation carried out between 10 December 2012 and 10 March 2013 served as a valuable input in further development of draft implementing technical standards (ITS).
5. A detailed overview of the main stakeholders’ comments is provided in the previous section “Feedback Statement”.

**2: Problem definition**

1. The IORP Directive 2003/41/EC was published in the Official Journal on 23 September 2003 and had to be implemented by Member States by 23 September 2005. This Directive is a minimum harmonisation instrument with a main objective to create a Community legal framework covering the activities and supervision of institutions for occupational retirement provision[[1]](#footnote-2) as it provides for prudential regulation based on minimum harmonisation and mutual recognition. In addition, the IORP Directive provides a framework for cross-border activity of IORPs by enabling an employer in one Member State to sponsor an IORP located in another Member State or, conversely, by enabling an IORP located in one Member State to be sponsored by one or more employers in different Member States.
2. Since the implementation of the IORP Directive by Member States there has been an increase in the number of cross-border pension arrangements. Despite this, the level of cross-border cases still remains relatively low. According to data published by the European Commission, in 2011 there were less than 80 IORPs operating across different Member States, which represents a very small proportion of the ca. 140 000 IORPs[[2]](#footnote-3) existing in the EU.[[3]](#footnote-4) The Market Development report[[4]](#footnote-5) published by EIOPA shows that as at June 2013, a total number of 82 cross-border IORPs exist.
3. A chart below presents obstacles to cross-border activity identified by stakeholders in their responses to the EIOPA consultation paper on the review of the IORP Directive.[[5]](#footnote-6) A lack of certainty on prudential regulation is one of the barriers mentioned by some of the stakeholders. There is also an issue of what is considered prudential law and social and labour law (SLL) in different Member States. Thus, the uncertainty about the existing prudential rules and social and labour law seems to be one of the reasons behind the low level of cross-border IORPs in the European Union.
4. Nevertheless, the interaction between prudential law and SLL is not always clear and there is a wide diversity of views of what constitutes prudential rules between Member States making a common standard very difficult to achieve.

Source: Keynote speech of the EIOPA Chair “Enhancing the European market for occupational pension provision” [https://eiopa.europa.eu/press-room/speeches-presentations-and-interviews/index.html](https://register.eiopa.europa.eu/press-room/speeches-presentations-and-interviews/index.html). The chart is based on EIOPA internal analysis of stakeholders’ replies to EIOPA’s Advice on revision of IORP Directive.

1. The relevant prudential provisions for occupational pension schemes in a Member State are contained within the MS’s own legal and regulatory frameworks and each Member State has its own arrangements for sharing that information with stakeholders (e.g. official journals, websites of competent authorities). In order to create a centralised source of information at an EU level on national provisions of prudential nature these draft implementing technical standards provide for uniform rules on procedures, formats and templates to be used by competent authorities when reporting to EIOPA on such provisions.The competent authorities will provide information on their national provisions of prudential nature relevant to the field of occupational pension schemes, which are not covered by the reference to national social and labour law in Article 20(1) of the IORP Directive on an annual basis and EIOPA will make that information available on its website.
2. The analysis of the expected impact of the ITS is compared to the expected impact from a baseline scenario. The baseline is defined as the world under a set of assumptions about what would happen to the occupational pension schemes environment in the absence of these implementing technical standards. Given that the national provisions of prudential nature relevant to the occupational pension schemes neither have been reported to EIOPA before nor have been published on EIOPA website, these technical standards change the baseline scenario, i.e. the situation of “no reporting”. Member States had previously reported on the relevant social and labour law applicable to cross border schemes to CEIOPS (EIOPA’s predecessor)[[6]](#footnote-7). The terms “national provisions of a prudential nature” and “SLL” are not defined, though some examples of the latter are given in Recital 37 and in Article 20(1) of the IORP Directive.

|  |
| --- |
| **3: Objectives pursued** |

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

|  |
| --- |
| **4: Policy options, analysis of impacts and comparison** |

***Policy options with regard to the ITS reporting requirement***

1. The policy development process has considered two sets of policy options.

**Set 1**: on templates and formats

* **Option 1.1**: in which the draft ITS would **not** clearly establish a uniform way of the ITS reporting requirement.
* **Option 1.2**: in which the draft ITS would clearly establish a uniform way of the ITS reporting requirement.

**Option 1.2**: MS to report to EIOPA national provisions of prudential nature relevant to the field of occupational pension schemes **in a uniform way (fixed structure of the template)**

**Option 1.1**: MS to report to EIOPA national provisions of prudential nature relevant to the field of occupational pension schemes **not in a uniform way (no fixed structure of the template)**

**Set 2**: on procedures (frequency) of reporting

* + **Option 2.1** – in which competent authorities would transmit to EIOPA information on prudential rules every two years and report to EIOPA on any “significant change” in the national provisions.
	+ **Option 2.2** – in which competent authorities would not transfer “significant change” updates to EIOPA. Complete templates would be sent annually instead of on two-year basis as stipulated by Article 20(11) of the IORP Directive.

**Option 2.2**: MS to report to EIOPA national provisions of prudential nature relevant to the field of occupational pension schemes on annual basis; no reporting on significant change

**Option 2.1**: MS to report to EIOPA national provisions of prudential nature relevant to the field of occupational pension schemes every two years and when a “significant change” takes place

***Analysis of impacts of policy options under Set 1***

1. The cost and administrative burden for both options is expected to fall mostly on competent authorities (CAs) who will be responsible for reporting and providing regular updates. There will be a cost for EIOPA in relation to receiving reports from competent authorities, keeping information up-to-date and placing the information on EIOPA’s website; this cost may depend on the volume and quality of the information received.
2. CAs may also encounter operational costs as an employee of a competent authority would have to ensure that the reports meet the deadlines set in the ITS. The overall costs for the competent authorities are estimated to be low. The competent authorities who participated in a test exercise organised by EIOPA reported that it took them on average 3-4 working days to complete the template by 2 employees. This depends mostly on whether concordance/transposition tables already exist, and their level of detail.
3. Some competent authorities levy fees or impose contributions on IORPs. Therefore, any increased costs arising from an increased administrative burden could be passed on to IORPs which, in turn, may pass them on to members and beneficiaries. However, based on the experience of CAs during the test exercise and that the overall costs for CAs are estimated to be low, the cost impact on stakeholders is not likely to be extensive.
4. The rules relating to occupational pensions are already available on various national websites (official journals of Member States and/or competent authorities’ websites). Reporting parts of these rules (that relates to prudential matters) to EIOPA provides the benefit of having all national provisions of prudential nature in one place (EIOPA website). The uniform presentation of national provisions of prudential nature will improve the transparency and comparability of prudential frameworks which may lead to a decrease of advisory and legal costs for the industry and consequently translate into lower fees charged to members and beneficiaries or increased benefits. This may ultimately facilitate the consideration of IORPs cross-border activity and mitigate the problems as identified in point 2.
5. There is no definition of “provisions of prudential nature” in the IORP Directive. This notion would therefore be subject to varying interpretations amongst Member States. Arguably “prudential rules” may overlap with elements of national law such as company law, insolvency law, etc. Finding a borderline between prudential rules and other areas of law may be considered as going beyond the remit of EU implementing acts.[[7]](#footnote-8) Therefore, due to the differences in terminology across Member States (as recognised also by stakeholders) it was not practical to establish taxonomy of national provisions of prudential nature.

***Comparison of policy options under Set 1***

1. **Option 1.1** is less convincing for a number of reasons:
* Does not have the benefit of providing a direct link to the Articles of the IORP Directive.
* Does not capture in a structured way the national provisions of prudential nature, which would otherwise be useful for the purposes of presenting the information in a consistent and transparent way on EIOPA website.
* Expected cost in the long term would be higher as it would be more difficult to make updates under this option.
* Lower level of comparability of the reported information between Member States.
1. **Option 1.2** is consideredto:
* Have the benefit of providing a direct link to the Articles of the IORP Directive.
* Capture in a structured way the national provisions of prudential nature, which is very useful for the purposes of presenting the information in a consistent and transparent way on EIOPA website.
* Contribute to lower expected cost in the long term as it would be easier to make updates under this option.
* Contribute to higher level of comparability among Member States regarding the reported information.

***Comparison of positive & negative impacts of policy options under Set 1***

1. Both options achieve the objectives of implementing Article 20(11) of the IORP Directive and will promote transparency and harmonisation. However, both options differ in their positive and negative impacts.
2. **Positive impacts of adopting option 1.1**:
* Competent authorities – easier first transmission.
* IORPs, sponsoring undertakings – transparency because national provisions of all Member States are stored and available in one place (EIOPA website). Possible increase of cross-border activity; reduction in legal transaction costs which may result in lower fees/increased benefits.
* Members and beneficiaries – transparency; access to the national provisions of prudential nature; reduction in legal transaction costs which may result in lower fees/increased benefits.
1. **Negative impacts of adopting option 1.1**:
* Competent authorities – higher expected cost in the long term; more difficult to update the information in the future.
* IORPs and sponsoring undertakings – less comparability because the reported information is not structured. Potential increased costs in fees/contributions.
* Members and beneficiaries – lower level of comparability. Potential increased regulation costs that could impact on members’ and beneficiaries’ benefits.
1. **Positive impacts of adopting option 1.2**:
* Competent authorities - transparency and comparability of reported information; increase of consistency and convergence of reporting; easier to provide updates in the future.
* IORPs and sponsoring undertakings – transparency and comparability provided; better access to the national provisions of prudential nature as the information is stored and available in one place (EIOPA website); possible increase of cross-border activity; reduction in legal transaction costs which may result in lower fees/increased benefits.
* Members and beneficiaries – transparency and comparability; better access to the national provisions of prudential nature at EIOPA website; reduction in legal transaction costs which may result in lower fees/increased benefits.
1. **Negative impacts of adopting option 1.2**:
* Competent authorities - cost of reporting, but lower especially in the long term than under option 1.1; first transmission may be more difficult than under option 1.1.
* IORPs and sponsoring undertakings - potential increased costs in fees/contributions but less than under option 1.1.
* Members and beneficiaries - potential increased regulation costs that could impact on members’ and beneficiaries’ benefits but less than under option 1.1.

|  |  |  |
| --- | --- | --- |
| **Policy Options****Set 1** | **Party Affected** | **Impact** |
| **Description** | **Type of Impact** (Direct/ Indirect) | **Effect** (-/0/+) | **Likelihood of Impact** (L/M/H)[[8]](#footnote-9) | **Timing of Impact** (S/L/P)[[9]](#footnote-10) |
| **Option 1.1:** MS to report to EIOPA national provisions of prudential nature relevant to the field of occupational pension schemes **not in a uniform way (no fixed structure of the template)** | **Members &****Beneficiaries** | Members’ benefits indirectly affected only if CAs pass on the costs to IORPs.Transparency of national provisions of prudential natureComparability  | IndirectDirectDirect | 00- | LML | LL- |
| **IORPs and sponsoring undertakings** | Levy fees/contributions collected by CAs may increase as a result of reporting requirementsTransparency of national provisions of prudential natureComparability | IndirectDirectDirect | 00- | LML | LL- |
| **Competent****authorities** | The responsibility for the initial, annual and voluntary transmission | Direct | - | H | P |
| **EIOPA** | Collecting and publishing the reported material on the website | Direct | 0 | H | P |
| **Option 1.2:** MS to report to EIOPA national provisions of prudential nature relevant to the field of occupational pension schemes **in a uniform way (fixed structure of the template)** | **Members &****Beneficiaries** | Members benefits indirectly affected only if CAs pass on the costs to IORPs or if the legal transaction costs are lowerTransparency & comparability of national provisions of prudential nature | IndirectDirect  | 0+ | LH | LL |
| **IORPs and sponsoring undertakings** | Levy fees/contributions collected by some CAs may increase but possible reduction of legal transaction costsTransparency & comparability of national provisions of prudential nature | IndirectDirect | ++ | LH | LL |
| **Competent authorities** | The responsibility for the initial, annual and voluntary transmission | Direct | - | H | P |
| **EIOPA** | Collecting and publishing the reported material on the website | Direct | + | H | P |

|  |  |  |
| --- | --- | --- |
| **Policy Options** | **Relevant objectives** | **Additional quality indicators** |
| to implement requirements of Article 20(11) of the IORP Directive | to create a centralised source of information at EU level on national provisions of prudential nature by providing uniform procedures, formats and templates to be used by CAs when transmitting and updating information to EIOPA | sustainability | consistency |
| Effectiveness (0/+/++) | Efficiency (0/+/++) | Effectiveness (0/+/++) | Efficiency (0/+/++) | (0/+/++) | (0/+/++) |
| **Set 1** | **Option 1.1** | 0 | + | 0 | + | 0 | 0 |
| **Option 1.2** | ++ | ++ | ++ | ++ | ++ | ++ |

***Conclusion with regard to the Set 1 of policy options***

1. On the basis of the above analysis the objectives pursued could be better fulfilled and the **uniformity** of reporting and presenting the information achieved in a more proportionate way through option 1.2.
2. In conclusion, the comparison of options shows that implementation of option 1.2 would likely produce overall benefits (transparency, simplicity, clarity, comparability, reduced legal transaction costs). This is expected to exceed the associated costs of reporting, resulting in a significant improvement compared to the baseline scenario of “no reporting”.
3. In comparison to the baseline scenario, EIOPA believes that the uniform approach to reporting provided by the template helps achieve the objectives of the draft ITS in an effective and efficient way by providing a clear overview on the variety of national provisions of prudential nature relevant to the field of occupational pension schemes across EEA countries. Necessary distinctions have been made when it comes to different provisions being applied to different structural types of IORPs as well as to the different territorial extent of the reported provisions. The structure of the template and the format are clear and enable reporting in an easy and transparent way.
4. On reporting formats and templates, EIOPA suggests that a proportionate response would be for competent authorities to fill in a template with the following types of information:
* names of a competent authority and Member State, date of transmission of the information to EIOPA,
* type of a report regarding transmission of data (first, voluntary, annual),
* if the report refers to the business of occupational retirement provisions of insurance undertakings (commonly known as “Art. 4 IORPs”),
* structural type(s) of IORP - where there is more than one structural type of IORPs in a Member State and they fall under different national prudential provisions names of those types need to be provided. In such a case CA needs to indicate which provisions apply to which type of an IORP (e.g. in DE there are two structural types: “Pensionskasse” and “Pensionsfonds”).
* territorial extent of the reported provisions where these do not extend to the whole of the territory of the MS concerned (e.g. with regard to the UK there are some implementing provisions for Northern Ireland). In such a case, the territorial extent of each of the reported provisions needs to be indicated.
* the respective number, title of the section(s) and official names of the relevant acts and other relevant instruments, if applicable.
* hyperlinks to the relevant section of the website containing the full text of the acts and other relevant instruments, where available.
* In addition under category “Other” competent authority would report on national prudential provisions which are not captured in the template list.
1. In order to minimize costs EIOPA suggests that this template should be delivered in an electronic format.

***Comparison of*** ***policy options under Set 2:***

1. According to Article 20(11) of the IORP Directive, Member States are required to update the information on national prudential provisions on a regular basis and at least every 2 years. This requirement could be implemented by either of the following ways:
* **Option 2. 1** - to require the competent authorities to transmit to EIOPA information on prudential rules every two years and report to EIOPA on any “significant change” in the national provisions.
* **Option 2.2** – not to transfer “significant change” updates to EIOPA. However, to ensure that the information on EIOPA website remains as current as possible, the competent authorities would be required to submit to EIOPA complete templates annually instead of on two-year basis as stipulated by Article 20(11).
1. **Positive impacts of Option 2.1** can be summarised as follows:
* The information about national provisions of prudential nature on the EIOPA website will be more up to date.
* Consequently the information will be more useful to stakeholders.
1. **Negative impacts of Option 2.1** are as follows:
* Transmission of information to EIOPA when significant changes occur is not explicitly foreseen in Article 20(11), in contrast to the rules on transmitting social and labour law according to Article 20(8) of the IORP Directive; consequently, a requirement to update EIOPA on “significant changes” in the national prudential rules seems to go beyond the empowerment in the IORP Directive.
* Lack of legal clarity due to problems with defining what constitutes a “significant change”; having a wide definition of a “significant change” could result in a disproportionate burden on competent authorities and increase their compliance costs.
* Benefits may be indirectly affected if CAs pass on the costs to IORPs as a result of more frequent reporting.
1. **Positive impacts of Option 2.2** can be summarised as follows:
* Higher level of legal certainty compared to option 2.1.
* No duplication of work done at the national level with respect to publication of legislation amendments.
* No disproportionate burden on competent authorities in determining what constitutes a “significant change”.
* National provisions of prudential nature do not change often and therefore updates more frequent than on annual basis would not add much more value.
1. **Negative impacts of Option 2.2** are as follows:
* Increased risk that the information about national provisions of prudential nature on the EIOPA website may become outdated.
* Consequently, the information may not be useful to stakeholders.
* Benefits are less likely to be affected only if CAs pass on the costs to IORPs.

|  |  |  |
| --- | --- | --- |
| **Policy Options****Set 2** | **Party Affected** | **Impact** |
| **Description** | **Type of Impact** (Direct/ Indirect) | **Effect** (-/0/+) | **Likelihood of Impact** (L/M/H) | **Timing of Impact** (S/L/P) |
| **Option 2.1:** MS to report to EIOPA national provisions of prudential nature relevant to the field of occupational pension schemes every two years and when a “significant change” takes place | **Members &****Beneficiaries** | Member benefits may be indirectly affected if CAs pass on the costs to IORPs as a result of more frequent reportingUp to date information on national provisions of prudential nature | IndirectDirect | -+ | MM | LL |
| **IORPs and sponsoring undertakings** | Levy fees/contributions collected by CAs may increase as a result of more frequent reporting Up to date information on national provisions of prudential nature | IndirectDirect | -+ | MM | LL |
| **Competent****authorities** | The responsibility for the initial, annual and “significant change” transmission  | Direct | - | H | P |
| **EIOPA** | Up to date information on national provisions of prudential nature on EIOPA website | Direct | + | H | P |
| **Option 2.2:** MS to report to EIOPA national provisions of prudential nature relevant to the field of occupational pension schemes on annual basis; no reporting on significant change | **Members &****Beneficiaries** | Member benefits less likely to be affected and only if CAs pass on the costs to IORPs Up to date information on national provisions of prudential nature | IndirectDirect  | ++ | LH | LL |
| **IORPs and sponsoring undertakings** | Less likely that costs would be passed on to IORPs under this option Up to date information on national provisions of prudential nature | IndirectDirect | ++ | LH | LL |
| **Competent authorities** | The responsibility for the initial, annual and voluntary transmission Up to date information on national provisions of prudential nature | DirectDirect | ++ | HH | PP |
| **EIOPA** | Up to date information on national provisions of prudential nature on EIOPA website | Direct | + | H | P |

|  |  |  |
| --- | --- | --- |
| **Policy Options** | **Relevant objectives** | **Additional quality indicators** |
| to implement requirements of Article 20(11) of the IORP Directive | to create a centralised source of information at EU level on national provisions of prudential nature by providing uniform procedures, formats and templates to be used by CAs when transmitting and updating information to EIOPA | sustainability | consistency |
| Effectiveness (0/+/++) | Efficiency (0/+/++) | Effectiveness (0/+/++) | Efficiency (0/+/++) | (0/+/++) | (0/+/++) |
| **Set 2** | **Option 2.1** | 0 | + | 0 | + | 0 | 0 |
| **Option 2.2** | ++ | ++ | ++ | ++ | ++ | ++ |

***Conclusion with regard to the Set 2 of policy options***

1. Based on the experience of CAs, EIOPA concludes that the benefits of requiring competent authorities to transmit information on the “significant change” in the legislation (Option 2.1) are outweighed by the costs. These costs may be passed on to IORPs and sponsoring undertakings and ultimately to members and beneficiaries. Therefore, considering that provisions of prudential nature do not change that frequently, it was concluded that Option 2.2 better fulfils the objectives of the draft ITS.

|  |
| --- |
| **5: Monitoring and evaluation** |

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

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

1. Recital 40 of the IORP Directive. [↑](#footnote-ref-2)
2. It should be noted that this figure includes a large number of small IORPs with fewer than 100 members. [↑](#footnote-ref-3)
3. Call for advice from the European Insurance and Occupational Pensions Authority (EIOPA) for the review of Directive 2003/41/EC (IORP II), page 3. Available at:<http://ec.europa.eu/internal_market/pensions/docs/calls/042011_call_en.pdf> [↑](#footnote-ref-4)
4. 2013 Report on Market Developments in cross-border IORPs, EIOPA-BoS-13-134, available at:

[https://eiopa.europa.eu/fileadmin/tx\_dam/files/publications/reports/2013\_Report\_on\_market\_developments\_in\_cross-border\_IORPs.pdf](https://register.eiopa.europa.eu/fileadmin/tx_dam/files/publications/reports/2013_Report_on_market_developments_in_cross-border_IORPs.pdf) [↑](#footnote-ref-5)
5. Consultation Papers and Reasoned feedback available at: [https://eiopa.europa.eu/consultations/consultation-papers/2011-closed-consultations/index.html](https://register.eiopa.europa.eu/consultations/consultation-papers/2011-closed-consultations/index.html) and [https://eiopa.europa.eu/publications/submissions-to-the-ec/index.html](https://register.eiopa.europa.eu/publications/submissions-to-the-ec/index.html) [↑](#footnote-ref-6)
6. Social and labour law relevant to the field of occupational pensions. Available at: [https://eiopa.europa.eu/en/fixed-width/disclosure/occupational-pensions/links/index.html](https://register.eiopa.europa.eu/en/fixed-width/disclosure/occupational-pensions/links/index.html) [↑](#footnote-ref-7)
7. See Article 15 of the EIOPA Regulation regarding Implementing technical standards. [↑](#footnote-ref-8)
8. Low, medium, high. [↑](#footnote-ref-9)
9. Short-term, long-term, permanent. [↑](#footnote-ref-10)