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30th of January 2026

Presidency discussion paper on amendments to IORP II Directive

30 January 2026 09:00

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Introduction

On 20 November 2025, as part of a package of measures to help citizens secure adequate income in retirement by improving access to better and more effective supplementary pensions, the European Commission proposed the amendment of the Directive on Institutions for Occupational Retirement Provision (IORP) II with the aim to strengthen and modernise the framework to better support efficiency, scale and trust in supplementary pensions.

The amending Directive was presented to Member States (MS) by the Commission on 1 December along with the Staff Working Document that assessed the impact of the proposed amendments. MS were invited to provide the Presidency (PCY) with written comments by the 19th of December in preparation for Council Working Party (CWP) examination of the text from January onwards.

Purpose of the discussion

The purpose of this paper is to provide the basis for discussions on the proposed amendments to Directive (EU) 2016/2341 ("the Directive") for a number of selected subjects at the CWP meeting of 30 January.

For each particular subject, the paper includes a description of the contents of the proposed amendments, the views already received from Member States in relation to that particular subject, and any relevant clarifications already received from the Commission.

For each item, Member States are invited to express their views and send their comments.

Topics of discussion on the IORP proposal

This note serves to structure the debate which will focus on:

- Scope, definitions, activities of IORPs and provision by IORPs of personal pension products, including PEPPs, Proportionality criteria
- Authorisation, multi-sponsor IORPs, and operating requirements
- Establishment and freedom of services, cross border activities and procedures

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1. Scope, definitions, activities of IORPs and provision by IORPs of personal pension products, including PEPPs, Proportionality criteria

1.1 Scope and application of the Directive – Articles 2,3 and 4

1. Purpose of the discussion

This item intends to present the amendments introduced in the proposal concerning 3 articles: Scope (Article 2), Application to IORPs operating social insurance schemes (Article 3) and Optional Application (Article 4) and to take note of Member States' initial reactions and concerns. For each item Members are invited to express their views.

A relevant aspect and subject of the Commission's proposal are the proposed amendments to the articles on the scope and application of the Directive.

The Commission's proposal addresses the scope of the IORP II Directive where, in accordance with national law, IORPs are constituted in a form under which their activities are carried out by authorised entities acting on their behalf. It also clarifies how the Directive applies to IORPs that operate social security schemes alongside other retirement provision schemes, as well as to IORPs that provide personal pension products. It also amends and updates the Directive's optional scope.

1.1.1. Art. 2 – Scope and Recitals 10, 11, 12 and 13

1. Content of the proposal

With regards to the scope, in Recital 10 it is stated that the Directive (EU) 2016/2341 ("the Directive") should apply to all IORPs, unless they are expressly excluded pursuant to Article 2(2), and emphasizes that the Directive's application should reflect the objectives pursued by it, and also the diversity of arrangements within Member States, and it also specifies that the Directive should be implemented in a manner that recognizes the full spectrum of existing occupational pension provision.

In addition, in Recital 11 the proposal provides that in cases where, based on provisions of national law, IORPs, despite having legal personality, are to be operated by authorized entities responsible for acting on their behalf, explicit reference should be included in Article 2(1) of the Directive. This reference should state that the Directive should apply to both situations where IORPs do not have legal personality, which should continue to be covered, and also to situations where IORPs have legal personality but, based on provisions of national law, are allowed to be operated by such authorized entities.

In Recital 12 it is stated that, in cases where the responsibility for the operation of an IORP is shared between the IORP itself and an authorized entity acting on its behalf, each performing

distinct but complementary functions, the application of the Directive should be coherent with that allocation of responsibilities under national law, and ensure that all those responsible are fully subject to its requirements, irrespective of the legal form of the IORP. For these cases, it is clarified that such situation should be distinguished from outsourcing as referred to in Article 31 of that Directive, since the shared exercise of responsibilities in these instances stems from the institutional structure of the IORP as defined under national law and not from a contractual outsourcing of functions, and, for these cases, Member States should ensure that the assets of the IORPs are legally separated from those of the authorized entities operating them.

Article 2 of the proposal introduces a targeted amendment to clarify how the requirements of the Directive apply in Member States where, in accordance with national law, IORPs may be constituted in a form under which, irrespective of whether they have legal personality or not, authorised entities (e.g. insurance undertakings or entities authorised under national law) are responsible for operating them and acting on their behalf.

The provision specifies that, depending on the allocation of responsibilities between an IORP and an authorised entity, the Member State must apply the Directive to the IORP, to the authorised entity, or to both, as appropriate, thereby ensuring that the provisions of the Directive are fully applied irrespective of the internal organisation structure. Where, for instance, responsibility for the operation of the IORP is shared between the IORP and an authorised entity operating it, the requirements of the Directive should apply to each entity in accordance with its respective responsibilities and functions. It is moreover provided that the assets of the two entities must be legally separate.

The proposal also introduces a non-discrimination provision whereby, in Member States that permit entities governed by Solvency II, MiFID II, UCITS, AIFMD and CRD Directives to operate such IORPs, such entities established in other Member States may not be restricted from operating such IORPs.

In Recital 13 it is pointed out that, the determination of whether an institution qualifies as an IORP_should depend on the activities carried out, irrespective of its legal form or designation under national law.

2. Member States views

Several Member States raised questions regarding the scope of the Directive, what is covered and what is not.

Some called for the explicit exclusion of compulsory employment-related pension schemes, while others sought clarification on the treatment of small institutions and stressed the importance of scoping them out.

With regard to the provision on allowing authorised management entities to operate in a cross-border context, diverging views were expressed. In addition, some MS pointed out that this

provision could be interpreted as introducing an EU-wide passport for pension fund management. Emphasis was also placed on the need to respect national social and labour law and the autonomy of social partners in such cross-border situations.

3. Questions

Q1: Do MS agree with the clarifications in Article 2 regarding the application of the Directive to the IORP and/or to the authorized entities operating them? If not, please explain why? Do MS see any need for further clarification?

Q2: Do MS agree with the clarification concerning the authorized entities established in another Member State, where such entities are authorised under Union law (e.g. Solvency II)? If not, please explain.

Q3: Do MS think there is a need for more clarification and/or a definition in the Directive regarding the "authorised entities" referred to in Articles 2 and 4, their supervision, and their operations/activities?

1.1.2. Art. 3 - Application to IORPs operating Social Security Schemes

1.Content of the proposal

The proposal provides that, IORPs which also operate pension schemes that are considered to be social security schemes covered by Regulations (EC) No 883/2004 and (EC) No 987/2009 shall be covered by this Directive in respect of their retirement provision business not covered by those Regulations. In that case, the proposal provides that the liabilities and corresponding assets of the IORPs business which is not covered by the above-mentioned regulations, shall be ring-fenced, and it shall not be possible to transfer those liabilities and corresponding assets to the pension schemes which are considered to be social security schemes, or vice versa.

The Presidency understands that the objective of amendments to Article 3 is to remove the reference to compulsory employment-related schemes, having regard to the way pension schemes qualifying as social security schemes are characterised under Regulations (EC) No 883/2004 and (EC) No 987/2009.
The amended provision maintains the obligation that, where an IORP operates social security schemes and other forms of retirement provision under this Directive, such activities shall be ring-fenced from one another.

Ringfencing is understood as precluding the transfer of liabilities and corresponding assets between the social security and the pension schemes. Article 3 clarifies this separation of pension and social security liabilities and assets as prevailing principle throughout the IORP Directive. Also, in accordance with Article 3, social security and occupational pension schemes need to be operated separately, irrespective of whether such schemes are voluntary or mandatory.

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2. Member States views

Several Member States sought clarification on the scope, practical application, and rationale of Articles 3 and 4 and some Member States questioned the purpose of the amendments.

Key points of concern included the compatibility of the Directive with existing social security regulations, and the potential effects on financial institutions subject to targeted measures.

Questions were also raised on the removal of the term "compulsory" from the previous wording "compulsory pension schemes", and also the removal of the wording "non-compulsory occupational" from the previous wording "non-compulsory occupational retirement provision business".

3. Questions

Q4: Do MS see a need for any further clarification in regards to the scope of Article 3?

1.1.3 Art. 4 - Optional Application:

1. Content of the proposal

As provided in Article 4 of the proposal:

"Member States **may apply** some or all of the provisions of the Directive to institutions, irrespective of their legal form, operating on a funded basis for the purpose of providing retirement benefits:

(a) that are excluded from the scope of this Directive pursuant to Article 2(2), points (a) and (d); or
(b) that are not covered by this Directive or by Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU and 2014/65/EU.", and

In addition, the proposed Article 4 provides that:
"In the case of institutions referred to in Article 2(2), point (a), Member States **may decide** on the application of provisions of this Directive only insofar as that application is compatible with Regulations (EC) No 883/2004 and (EC) No 987/2009.",
and
"where in accordance with national law, the institutions (IORPs) referred to in the first paragraph above are operated/managed by authorized entities responsible for acting on their behalf, Member States **may decide** to apply this Directive either to those IORP institutions or to the authorized entities which are responsible for operating them and acting on their behalf, or to both, as appropriate."
Also, in recital 13 it is mentioned that Member States should have the option to apply that Directive to institutions otherwise excluded from its scope and not covered by any other Union

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prudential framework, and that this is particularly relevant where the level of benefits offered to members and beneficiaries depends on the performance of the institution in managing assets and is not guaranteed by a public authority.

The Presidency understands that, with regards to the institutions referred to in Article 2(2), point (a), of the Directive, to which Member States may decide to apply provisions of this Directive, Article 4 does not infer an incompatibility in case IORP II is applied to institutions which are covered by Regulations (EC) No 883/2004 and (EC) No 987/2009. The Presidency understands that the provision was added as an additional safeguard to avoid any potential doubt.

2. Member States views

Several Member States sought clarification on the scope, practical application, and rationale of the amended Articles 3 and 4, and some Member States questioned the purpose of the amendments.

Key points of concern included the compatibility of the Directive with existing social security regulations, and the potential effects on financial institutions subject to targeted measures.

3. Questions

Q5: Do MS think that the optional application of the Directive to institutions covered by Regulations (EC) No 883/2004 and (EC) No 987/2009 may give raise to any incompatibility with provisions of these Regulations? If yes, do MS consider that further clarification should be provided with respect to the compatibility issue?

Q6: Are there any points of concern for which clarification and/or reasoning should be provided?

1.2 Definitions (Article 6)

1.2.1 Definition of IORP:

1. Content of the proposal

In Article 6, a revised definition for "IORP" is introduced.

Based on the current definition, it is clear that an IORP has the following four basic characteristics, irrespective of its legal form:

(a) It is an institution which is established separately from the sponsoring undertaking or trade,
(b) it operates on a funded basis,
(c) it' s purpose is to provide retirement benefits in the context of an occupational activity, on the basis of an agreement or a contract agreed:

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(i) Individually or collectively, between the employer and the employees or their representatives, or
(ii) with self-employed persons individually or collectively,

(d) It carries out activities directly arising therefrom.

According to the new definition proposed, characteristic (d) above is replaced by:

"Carries out activities directly arising therefrom and, where permitted under national law, personal retirement provision."

Characteristic (c) above, refers to "occupational activity", i.e. occupational retirement benefits provision, and to "an agreement or a contract, which is agreed individually or collectively between an employer and his employees or their representatives", and (d) refers to "activities directly arising therefrom", i.e. from (a), (b) and (c) above. These activities are occupational retirement provision activities, and the scheme is provided through an agreement or a contract between an employer and his employee(s), or through an agreement between the IORP and self-employed person(s).

The amendment/addition in characteristic (d), based on the new definition, is not changing in any way the occupational retirement provisions activities, which are stemming from (a), (b) and (c) above. Building on the approach reflected in Article 6(1), point (c), of the PEPP Regulation, the proposal is purely confirmatory in nature and does not alter the substance of the existing legal framework. It clarifies the possibility for IORPs to also carry out personal retirement provision business, provided this is permitted by National Law. A definition of personal pension products is also included in the proposal, referring to the definition in the PEPP Regulation.

Based on the PCY understanding of the Commission's approach to the change, Article 6 does not imply that the option for an IORP to provide a personal retirement scheme converts this personal pension into an occupational pension (by virtue of its provider), and in consequence, an employer who chooses to make contributions to a personal retirement provision operated by an IORP would not be considered as sponsoring an occupational (IORP) pension scheme.

2. Member States' views

Regarding the IORP definition, concerns were expressed about the scope and interpretation of the inclusion of reference to personal retirement provision therein, and its impact on the recognition and classification of IORPs under the Directive.

Also, questions were raised on whether the proposal signals an intention to harmonise personal pension products across Member States, and if so, whether this would be pursued through the IORP framework.

3. Questions

Q7: Do MS agree with the Commission proposal to clarify in the IORP II proposal Member States option to allow the provision of personal pensions products by IORPs and that the

amendment does not change in any way the occupational retirement provisions activities? Do MS have any suggestions in relation to this issue?

1.2.2 Definition of "Sponsoring undertaking"

1. Content of the proposal

The proposal introduces an amendment to the existing definition of sponsoring undertaking, with the addition in the text of the term "professional association or body". The Presidency understands that the provision that also a "professional association or body" can sponsor an occupational pension scheme reflects feedback received during the preparation of the proposal. This amendment clarifies that such associations or bodies (e.g., professional bodies for regulated professions) may constitute sponsoring undertakings of a scheme. It is moreover understood that such a "body" would only sponsor a defined contribution scheme.

2. Member state's views

One member state requested clarification regarding the inclusion of the term "professional association or body". Also another member state had concerns that the term Sponsoring undertaking would now also apply to an employer who pays contributions to an IORP for the purpose of personal retirement provision.

3. Questions

Q8: Do MS agree with the Commission's proposal? If not please justify/elaborate.

1.2.3 Definition of "Member"

1.Content of the proposal

The proposal introduces an amendment to the existing definition of "member" whereby for the purposes of purposes of Titles I, II, III, V and VI, 'member' would also mean personal pension saver where personal pension provision by IORPs is permitted under national law

2. Member states views

A member state expressed the view that it is unclear whether the personal pension being referred to is limited to the PEPP or to any other personal product manufactured and or distributed within a Member State.

3. Questions

Q9: Do MS agree with the Commission's proposal? If not please justify/elaborate.

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1.2.4 Definition of "Pension tracking system"

1. Content of the proposal

The proposal introduces a new definition for a pension tracking system.

Under the definition, a pension tracking system means a digital tool, typically a secure web portal or mobile application, that provides individuals with an overview of their individual accrued pension entitlements, and projections of future benefits, across the pension schemes of which the individual is a member or beneficiary.

2. Member states views

A Member State has suggested an amendment in specifying the form of digital tools so as to avoid overly narrowing down this definition.

3. Questions

Q10: Do MS agree with the Commission's proposal? If not please justify/elaborate.

1.3 Proportionality criteria – Amendment (2) of the proposed directive and Article 5

1. Content of the proposal

The words "size, nature, scale and complexity have been replaced throughout the Directive by "nature, scale and complexity". The Commission's proposal reflects EIOPA's advice and technical assessment that "size" is not an appropriate criterion for IORPs, whose prudential and governance requirements should reflect their risk profile rather than their absolute size, in line with the principle of risk-based supervision. The revised wording would align with that of Solvency II.

2. Member states views

Member States expressed diverging views on the proposed deletion of the reference to size. While few supported the change, several others opposed it or questioned its rationale and practical implications, calling for clarification on the objective and effects of removing the size criterion.

Many Member States pointed that proportionality is important for them and stressed the importance of a more effective and proportionate application of the Directive's requirements, in particular for smaller IORPs. Some called for discussion of the proposed thresholds or for the introduction of additional categories (e.g. small, medium-sized and large IORPs) to better tailor

obligations. Concerns were raised that the current approach is geared towards larger IORPs and consolidation. Several MS stressed that this approach risks increasing administrative burdens for smaller and well-functioning schemes, potentially undermining their sustainability.

3. Questions

Q11: Do MS agree with the Commission's proposal to remove the criterion of size for IORPs? If not please justify/elaborate.

Q12: Are there any other issues that MS consider that should be discussed, concerning the proportional application of the Directive?

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1.4 Activities of an IORP (Article 7):

1.Content of the proposal

Article 7 itself, introduces a requirement that 'Where, pursuant to national law, IORPs are authorised to provide personal pension products, all assets and liabilities corresponding to the personal pension provision business shall be ring-fenced, without any possibility to transfer those assets and liabilities to the other retirement provision business of the institution.'

In relation to Article 7, Recital 14 states that in some Member States, IORPs may also be allowed (based on National Law) to provide personal pension products, including the pan-European Personal Pension Product, as reflected in Regulation (EU) 2019/1238 of the European Parliament and of the Council, and in order to ensure a clear and sound organisation of such activities, and coherent and effective supervision across different forms of retirement provision, is therefore appropriate for this activity to be reflected within Directive (EU) 2016/2341.

The Presidency understands that Article 7 was amended because it reflects a good administrative practice to ring-fence occupational vs non-occupational liabilities and assets. The Presidency understand that the objective of such ring-fencing is to protect members of occupational pension schemes from indirect wealth transfers. In particular, where occupational schemes are defined benefit (DB), there may be a structural incentive to use surplus returns generated by assets backing those schemes to enhance the performance of personal pension products, which would constitute an inappropriate cross-subsidisation.

The policy aim is to clarify that IORPs, alongside other entities such as insurers, banks or investment firms, can offer a PPP (incl. PEPP) where allowed under national law. It builds on the approach reflected in Article 6(1), point (c), of the PEPP Regulation which includes IORPs as one of several entities that can provide PEPPs. The requirement not to transfer assets between occupational and non-occupational schemes, does not prevent asset pooling among several

occupational retirement schemes at the level of external asset managers. It is understood that the Commission's services are willing to assess whether a strict liability and asset separation between occupational and all types of non-occupational schemes is indeed optimal.

2. Member States views

Several Member States commented on the amended provisions of this article. While a limited number expressed support, most raised strong concerns or reservations. In particular, some Member States considered the proposed ring-fencing of activities relating to personal pension products to be unnecessary or overly restrictive and questioned its rationale.

Concerns were raised about consistency with existing national frameworks, the impact on defined contribution schemes and asset pooling, and potential competitive distortions vis-à-vis insurance undertakings subject to Solvency II.

Clarification was also requested on the interaction between the proposed rules and the Solvency II framework.

3. Questions

Q13: Do MS agree with the Commission's proposal on ring fencing in Article 7? If not please justify/elaborate

Q14: Do MS have any views concerning the provision of PPPs by IORPs, where allowed under national law, vis-à-vis the provision of PPPs by insurance undertakings under Solvency II?

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2. Authorisation, multi-sponsor IORPs and operating requirements

1. Purpose of the discussion

This item intends to present the amendments introduced in the revised proposal concerning 3 topics: authorisation (Article 9), multi-sponsor IORPs (Article 9a) and operating requirements (Article 10) and to take note of Member States' initial reactions and concerns. For each item Members are invited to express their initial views.

2.1 Authorisation (Article 9 and Article 3) - Introduction of the authorization process and new requirements (i.e. business plan etc.)

1. Content of the proposal

Under the current Directive, IORPs must be either registered in a national register or authorised by the competent authority. This has led to a situation where, in certain Member States, IORPs are subject to a prudential assessment (e.g., adequate capital resources to ensure business continuity, cost structure, fit and proper assessment of IORP board members) as part of the authorisation procedure, while in others no assessment at all or only a limited one is conducted. To ensure a level playing field across Member States and provide that only sound and professionally managed IORPs are allowed to operate, the Commission proposes to remove the possibility for the Member States to simply opt for a registration regime, harmonises the authorisation regime by also introducing the obligation to conduct a prudential assessment as part of the authorisation process.

Amendments to Article 9 introduce a mandatory authorisation procedure prior to the start of activities, requiring competent authorities to assess whether an IORP meets certain conditions set out in the Directive. In detail, the requirements are:

- a prudential assessment of the IORP's organisation, governance and risk profile: competent authorities are required to conduct a thorough assessment to verify the IORP's sound system of governance. Authorisation is tied to the prudential assessment of the persons who effectively run the institution, ensuring they possess the professional qualifications and integrity required under Article 22.
- IORP to present a business plan, in line with EIOPA's 2023 technical advice covering the types of schemes to be operated, estimated set-up and running costs, and the financial resources available to support these operations. The provision lists minimum content of the plan. It is understood from the proposal that certain information, such as the indication of the distribution and acquisition costs shall be indicated where relevant. The

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information to be submitted as part of the authorisation process may therefore vary depending on the operational nature (e.g., board composition) of the IORP seeking authorization.

- A six-month deadline for authorities to grant or refuse authorisation within six months of receiving a complete application, together with a right of appeal where no decision is taken within that period. By establishing a maximum six-month window for competent authorities to decide, the proposal aims to reduce market entry uncertainty while ensuring supervisors have sufficient time to verify the IORP's "sound system of governance".

The proposal provides also that the acceptance of one or more sponsoring undertakings after authorisation has been obtained, will not require the IORP to undergo a new authorisation procedure.

Article 3 of the proposal introduces a grandfathering clause for existing IORPs, so that IORPs registered or authorised under Directive (EU) 2016/2341 prior to the change in authorisation rules do not need to seek a new authorisation, reflecting the Commission's intention not to disrupt schemes already in operation.

2. Member States' views

Several Member States commented on the proposed authorisation process and associated requirements, including business plans and prudential assessments. Overall support was expressed on the new requirement for authorisation provided that grandfathering provisions are maintained, though concerns were raised about the proposed six-month authorisation deadline, with suggestions that the period should start only once a complete application is submitted. Some Member States requested more detailed specifications on the information to be provided and the prudential assessment, while others considered the text too vague or questioned the need for the assessment. Views on the business plan requirement were also mixed: some supported it provided that it would not result in more administrative burden or taking into account of national specificities, while others opposed it. Additional concerns were raised regarding the registration of new sponsors without prior administrative scrutiny by the competent authorities.

3. Questions

Q15: Do MS support the proposal of a harmonised authorisation regime which would include a prudential assessment? If not, please justify/elaborate.

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Q16: Do MS see the need of any adjustments in any of the authorisation requirements? Are additional clarifications needed in Article 9 to ensure a proportionate application of the authorisation requirements, in particular for smaller or less complex IORPs?

2.2 Multi-sponsor IORPs (Article 9a) - Implementation concerns regarding the operation and supervision of schemes with multi-sponsoring undertakings operating under Directive 2009/138/EC

1. Content of the proposal

Article 9a codifies the existing practice of IORPs operating different pension schemes, including schemes with different investment policies, and accepting sponsorship from multiple sponsoring undertakings within a single scheme (so-called multi-employer IORPs), as already reflected, inter alia, in Articles 19(1)(g) and 29 of the Directive. The rationale of the amendment is to make sure that, where the IORPs so decide, Member States do not restrict them from operating more than one pension scheme or from having different sponsoring undertakings within one scheme. We understand that the Commission considers this flexibility as being conducive to consolidation, scale, cost efficiency risk diversification and governance capacity in the occupational pensions market. The proposed amendments do not mean that any IORP is forced to accept additional sponsors, nor do they impinge on national social and labour systems. The decision to accept additional sponsors remains with the IORP.

At the same time, Article 9a allows Member States to require that schemes with multiple sponsoring undertakings be operated under Directive 2009/138/EC (Solvency II). This also accommodates the situation in MemberStates where multi-employers IORPs (e.g. sectoral pension funds) are operated by entities subject to Solvency II.

2. Member States' views

Several Member States provided comments on the proposed provisions for multi-sponsor schemes. Support was expressed by some, while others raised concerns or requested clarifications. Key issues included the potential impact on single-sponsor schemes, the practical implications for smaller IORPs and the meaning of "different pension schemes" (e.g., types of IORPs or other personal pension products). Various questions were also raised on the interaction with Solvency II requirements and whether such schemes would be fully subject to IORP II rules. Several Member States noted that the text was unclear and requested further analysis to assess its implications for national pension systems.

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3. Questions

Q17: Do MS have views concerning Article 9a, in particular concerning potential risks associated with multi-sponsoring structures? If not, please justify/elaborate.

Q18: Is the interaction between the proposed Article 9a and Solvency II framework clear or is further clarification needed to avoid legal uncertainty or unintended supervisory overlap?

Q19: Do MS consider that additional safeguards are needed to ensure that the proposed flexibility does not adversely affect smaller or single-sponsor IORPs?

2.3 Operating Requirements of IORPs (Article 10) - Clarifications regarding the operating requirement for sufficient financial resources to cover current and future operational costs and EIOPA guidelines on the prudential assessment and on the requirements laid down in Titles II and III

1. Content of the proposal

The proposal aims to strengthen the operating requirements for IORPs by introducing an explicit obligation to hold sufficient financial resources to cover both current and future operational costs. This requirement aims to ensure that IORPs have the necessary financial capacity to operate on a sound and continuous basis, independently of their funding position or sponsor support.

The proposal also mandates EIOPA to issue guidelines on the prudential assessment for authorisation and on the requirements laid down in Titles II (quantitative requirements) and III (system of governance) of the Directive aiming to reduce the divergence in how national authorities interpret the "minimum" level of safety. The Commission considers that such guidelines are necessary to promote supervisory convergence, reduce divergent interpretations of key requirements and support a more consistent application of the Directive across Member States. In the Commission's view, these measures contribute to strengthening confidence in the IORP framework, while maintaining flexibility through non-binding guidelines rather than directly harmonising all supervisory practices in the Level-1 text.

2. Member States' views

Member States expressed mixed views on the proposed requirement for IORPs to maintain sufficient financial resources to cover current and future operational costs. Few supported the

provision, while several others questioned its necessity or opposed it. Requests for clarification focused on the definition of "financial resources" (e.g., whether it includes reserves only or also future contributions) and the rationale for introducing an additional verification requirement, including whether this responds to specific difficulties experienced by IORPs.

Most Member States expressed opposition to the proposed obligation for EIOPA to issue guidelines, citing concerns that such guidelines could conflict with national legislation, undermine simplification efforts, and override the Directive's minimum-harmonisation approach. While one Member State expressed support, others questioned the necessity of guidelines at EU level and requested clarification on the Commission's intentions. Concerns were also raised about the potential impact on supervisory methodologies and the ability to account for the diversity of national pension systems.

3. Questions

Q20: Do MS agree with the requirement for IORPs to demonstrate they have sufficient financial resources to cover future operational costs? If not, please justify/elaborate.

Q21: Do MS agree with the Commission's proposal to mandate EIOPA guidelines on prudential assessment and Titles II and III, or should these elements be addressed directly in the Level-1 text?

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3. Establishment and freedom of services, cross border activities and procedures

3.1 Right of Establishment and Freedom to Provide Services - article 8a

1. Content of the proposal

The Commissions proposal seeks to reinforce the free movement of occupational pension institutions, ensuring that IORPs can operate cross-border or establish in another Member State without undue restrictions. It also aims to provide legal certainty for IORPs and prevent national barriers that could hinder cross-border activity, while maintaining a framework for supervision under Articles 11 and 11a for home and host Member State supervision.

Article 8a clarifies that IORPs are entitled to provide services throughout the Union in accordance with Articles 11 and 11a, and that Member States may not restrict IORPs from establishing themselves on their territory.

2. Member States' views

Some Member States expressed support for the proposal.

Others questioned its necessity and scope, in particular whether it adds value beyond existing national authorisation regimes.

Some MS sought clarification on its practical application, notably whether it would allow entities established in one Member State to open a branch in another without additional formalities, and how differing national requirements, supervisory responsibilities and coordination between home and host authorities would be addressed.

3. Questions

Q22: Do MS consider that further clarification is needed regarding the implementation of Article 8a, in particular concerning: (i) the precise scope and practical meaning of the right of establishment for IORPs operating in a host Member State; (ii) the practical application of the freedom to provide services without establishing a presence in the host Member State; and (iii) the procedures for supervision and the notification of cross-border activities between home and host competent authorities, including the respective roles and responsibilities of each authority?

Q23: Do MS consider that the proposed provision provides sufficient clarity regarding the respective supervisory responsibilities of home and host authorities?

If not, are further clarifications needed to ensure effective coordination between home and host authorities when an IORP establishes or provides services across borders?

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3.2 Cross border activities and procedures - Recital 18 of the Proposal and article 11

1. Content of the proposal

Building on recital 18, experience with Directive (EU) 2016/2341 shows that authorisation and supervision procedures for IORPs, in cross-border contexts, can cause delays and inconsistencies between Member States, potentially discouraging cross-border activity.

To respond to these challenges and facilitate cross-border activities of IORPs, the proposal streamlines and simplifies the passporting regime for the provision of occupational pensions, notably by streamlining the notification procedure, shortening deadlines and enhancing cooperation between home and host authorities. The overall aim is to reduce the administrative burden on IORPs seeking to operate in other Member States.
In view of the above, Article 11 introduces targeted changes through the following amendments:
-IORPs may carry out cross-border activities and accept sponsorship without requiring specific authorization from host Member States.

-The notification procedure has been streamlined: the home competent authority (NCA) informs the host NCA(s), and written notice must include all relevant information, covering multiple Member States and undertakings where applicable.

-Deadlines have been shortened to reduce administrative delays. While the information to be submitted by the IORP to its home competent authority along with the cross-border activity notification (Article 11(3)) remains unchanged compared to the existing Directive, the deadline for the home competent authority to transmit this information to the host competent authority is reduced from three to two months from the date of receipt. Moreover, the deadline for issuing a reasoned decision is set at one month instead of three, taking into account the adjustments introduced in the proposal to the authorisation procedure and supervisory framework.

-The proposed amendment to Article 11(6) reflects the envisaged harmonisation of the Pension Benefit Statement, while maintaining the ability of host Member States to apply additional information requirements to the provision of occupational pensions in accordance with Title IV. Simply put, IORPs remain subject to host Member State information rules, while the Pension Benefit Statement follows a harmonised EU format that can reflect different pension scheme characteristics, as well as accommodate the diversity of national pension systems.

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-The proposed amendment to Article 11(7), to be read in conjunction with Article 59, streamlines the framework for making available the requirements of social and labour law applicable to cross-border activities of IORPs, as well as the relevant information requirements of the host Member State under Title IV. The proposal replaces ad hoc reporting with a structured approach, including prior publication of national rules, designation of single points of contact, and communication of applicable legal provisions (SLL) to the home competent authority based on those rules.

In this context, the six-week period previously allocated to the host competent authority for transmitting such information is shortened to one month, taking into account that the relevant requirements are intended to be publicly available, kept up to date, and accessible in advance of any cross-border activity.

The revised wording of Article 11(7) clarifies that the host competent authority's preparation relates to its future supervisory responsibilities, including ongoing supervision of compliance with applicable social and labour law requirements. The one-month period is intended to allow the host authority to organise its supervisory arrangements while limiting delays to the start of cross-border activities.

Article 11(10) seeks to clarify that the Directive is neutral as regards the identification of the authority responsible for monitoring compliance with the host Member State social and labour law, leaving Member States free to identify the authority responsible to ensure ongoing compliance with social and labour law which may or may not be the prudential authority under the IORP II Directive.

Articles 11(12) and (13) align the powers of host Member States in the context of cross-border activities with those established in other areas of EU financial regulation, including Solvency II and the Insurance Distribution Directive. The host competent authority retains emergency powers to intervene if home measures are deemed insufficient. Any measures restricting the activities of IORPs must be duly reasoned and communicated without undue delay to the IORP, the Home Member State, and EIOPA, in accordance with the relevant provisions.

2. Member States' views

A number of MS expressed concerns that the proposed deadlines may be too short and suggested maintaining the current timelines, in particular as regards the reduction of the six-

week and three-month periods. Several delegations underlined that deadlines should begin to run only once a complete file has been submitted.

A number of MS expressed diverging views regarding the reason the proposal did not provide for a shift from a notification of intent to a notification of activity. Some supported further simplification, while others considered the current system to be clearer and therefore preferable.

A number of MS requested clarification of new concepts and procedures, including the simplified notification procedure, the legal enforceability of measures imposed on IORPs and terms including 'preparation' by host MS etc.

Many Member States expressed concerns regarding the proposed approach whereby IORPs would remain subject to host Member State information requirements, with the exception of the Pension Benefit Statement, which would be governed by harmonised EU rules, as well as regarding the role of EIOPA in this context. Concerns were raised about ensuring a level playing field in the provision of information between insurers and IORPs, in particular as regards comparability, and about the competence of Member States to include national specificities in the Pension Benefit Statement.

Divergent views were expressed on strengthening the role of host authorities, including their capacity to inform home authorities of instances of non-compliance with social and labour law.

3. Questions

Q24: Do MS agree with the proposed simplified procedure set out in Article 11 of the proposal? If not, do MS have any further suggestions or proposals to simplify the procedure put forward by the Commission and/or reduce the administrative burden of IORPs?
Q25: Do MS consider that the proposed shortening of timelines strikes an appropriate balance between facilitating cross-border activities and allowing competent authorities sufficient time to perform their supervisory tasks? If not, which specific deadline(s) do Member States consider to have been shortened excessively?
Q26: Do MS consider that further clarification is needed on the respective competences of home and host authorities, in particular with regard to supervision of social and labour law requirements? If yes, on what areas clarification may be needed?
Q27: Do MS support the proposed approach to the role of host authorities, including their ability to inform home authorities of non-compliance with social and labour law, take

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emergency measures, and ensure enforceability of their actions? Are there areas where the role of host authorities should be further clarified or adjusted?

3.3 Simplified notification for existing cross-border activities - Recital 19 of the Proposal and article 11a

1. Content of the proposal

Full cross-border procedures may not be necessary when an IORP extends activities to additional sponsoring undertakings or schemes in the same host Member State, as this could lead to duplication, additional costs, and delays without improving member protection. In line with Recital 19, such extensions should follow a simplified notification procedure, allowing proportionate supervision and effective cooperation between home and host authorities, to be completed within one month.

With the proposed new Article 11a(1) the Commission seeks to establish a procedural framework for an IORP already operating cross-border for updating previously notified information in advance, without triggering a new complete cross-border notification procedure. A notable change is that such IORPs must now notify both the home and host competent authorities simultaneously, rather than only the home authority as under current procedure. This ensures that competent authorities are kept informed to carry out their responsibilities, while avoiding unnecessary repetition of procedures for each update.

Article 11a(2), in line with EIOPA's technical advice, introduces a simplified notification procedure for cross-border IORPs whose members and beneficiaries fully bear the investment risk. This procedure applies to the notification of additional sponsoring undertakings or non-material changes to a previously notified scheme, allowing competent authorities to be informed through a lighter procedural framework, that reflects the limited impact of such changes on supervision.

2. Member States' views

Some Member States consider that requiring IORPs to provide written notification of changes to previously notified information to both the home and host competent authorities, rather than solely to the home authority as under the current framework, may entail an increased administrative burden for IORPs. Another Member State expressed concerns that the proposed one-month deadline may be insufficient for both the home and host authorities to effectively

fulfil their respective responsibilities, and therefore called for a return to the current three-month timeline.

Some Member States requested further clarification on the application of the proposed simplified notification procedure, while a number of Member States raised questions regarding the interpretation of what constitutes non-material amendments to the characteristics of the scheme.

3. Questions

Q28: Do Member States agree, in principle, with the new provisions in the new article 11a of the proposal?

Q29: Do MS consider that further clarification is necessary to ensure the consistent application of the rules across all Member States, particularly concerning what qualifies as a non-material amendment to the characteristics of a scheme? If so, should such clarification be provided through practical questions or examples that Member States may wish to submit for discussion?