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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Proposal for a Directive of the European Parliament and of the Council

on the activities and supervision of institutions for occupational retirement provision

(recast)

(Text with EEA relevance)

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1. INTRODUCTION

Pension systems across the European Union (EU) have to adapt in order to ensure adequate, safe and sustainable pensions. The Single Market, too, can contribute decisively to this goal. The White Paper on Pensions announces that "*[t]he Commission will, in 2012, present a legislative proposal to review [Directive 2003/41/EC on the activities and supervision of Institutions for Occupational Retirement Provision]*". Institutions for Occupational Retirement Provision (IORPs) are, like other financial institutions, an integral part of the Single Market.

Directive 2003/41/EC marked a first step on the way to a Single Market. Ten years after its adoption the Directive needs to be revised for five reasons. First, prudential barriers remain which make it more expensive for employers to join an IORP in other MSs. Second, the number of Europeans relying on defined-contribution (DC) schemes, which shifts risks from IORPs and employers to individuals, has increased significantly. Third, recent financial and economic crises have shown that current minimum levels of protection for scheme members and beneficiaries needs improving. Fourth, individuals do not receive essential information in a comprehensible manner, which prevents them from making informed decisions about their retirement financing. Fifth, supervisory powers are insufficient to ensure that IORPs comply with governance and transparency requirements.

Taking remedial action now to strengthening the EU's micro-prudential regulation for IORPs is important since improving the performance of occupational pension funds requires long periods of time to materialise. Failing to act now would lead to lost opportunities in terms of cost savings and investment returns, and inadequate financial planning by millions of European. It would also increase the burden disproportionately for the young generations and undermine inter-generational solidarity.

This proposal does not consider the introduction of new solvency rules for IORPs. This decision was taken following the extensive concern expressed by stakeholders during public consultations and on the basis of the results of EIOPA's Quantitative Impact Study ("QIS") in July 2013. The Commission Services, with the support of EIOPA, will re-examine the issue once more complete data are available.

2. PROBLEM DEFINITION

The Commission has identified the following four main issues: (1) complexity of cross-border activity, (2) governance and risk management requirements; (3) communication with members; and (4) supervisory powers.

2.1. Prudential barriers restricting the development of cross-border IORPs

The experience of employers, IORPs and supervisors over the past years has clearly shown that important prudential barriers restricting cross-border operations of IORPs remain. First, there are additional prudential requirements for cross-border activity, notably the following: i. the Directive leaves the discretionary power to impose additional investment rules with the host supervisor in the case of IORPs operating across borders; and ii. only cross-border pension schemes must be fully funded at all times.

Second, several definitions and procedures for cross-border activity are unclear, notably the following: i. no clear definition of cross-border activity exists; ii. smooth transfers of pension schemes from one IORP to another located in a different MS are not ensured; and iii. the scope of prudential regulation rules applicable in home MSs is uncertain.

2.2. Governance and risk management requirements are not sufficiently comprehensive

Direct failures of IORPs are rarely observed. IORPs do fail, however, indirectly and there are several indicators that these failures are caused by shortcomings in the governance and risk management practices of IORPs. This gives rise to three issues:

First, IORPs may not have appropriate governance functions in place. This concerns in particular the internal audit and risk management functions, as well as the actuarial functions for DB schemes. These functions' roles and activities are not sufficiently defined either. Consequently, these functions do not exist within IORPs or unqualified staff occupies key positions in the governance structure of IORPs. Moreover, a possible conflict of interest could arise, as the functions may be shared by an IORP and its sponsor.

Second, IORPs may not take a systematic approach to their own risk assessment and may not fully integrate the risk management system in the decision-making process of the IORP. A general lack of a comprehensive approach to risk management of financial institutions in the EU was revealed during the recent financial crises.

Third, IORPs do not necessarily use a depository in order to ensure the safety of their assets.

2.3. Members do not receive easy to understand pension information

Individuals need to be properly equipped to take informed decisions about pension savings, but there are several strong indications of unsustainable information inefficiencies, which lead to the conclusion that members and beneficiaries are not properly aware of developments that could negatively impact their pension benefits. Examples are reductions of accrued pension rights, significant costs and charges, lack of citizens' knowledge of their financial situation in general and in particular of the fact that they generally do not save enough for their pension.

2.4. There are shortcomings in the supervisory powers

Effective prudential supervision requires adequate powers for national supervisory authorities to perform their function of monitoring the soundness of IORPs. In the course of the consultations on this proposal three issues regarding supervisory powers have been identified.

First, IORPs have the possibility to circumvent prudential standards by chain outsourcing, i.e. 3rd party service providers transferring activities to subcontractors. Second, not all supervisory authorities have the power to develop necessary tools to stress test the financial situation of IORPs.

Third, supervisors could need additional powers in order to effectively supervise any new governance and transparency requirements introduced by this proposal.

3. SUBSIDIARITY AND PROPORTIONALITY

Although at present IORPs are important financing vehicles for retirement only in a few MSs, there is potential, looking forward, for further expansion in other MSs. MSs have been reducing, and some are still reducing, pension benefits from state pensions. As a consequence, an adequate replacement rate for European citizens will require additional retirement income from occupational and personal retirement provision. In many MSs private pensions are thus expected to provide for a larger share of retirement income over the next decades. Moreover, DC schemes are gaining importance and could increasingly be used in a cross-border context since their product features are simpler as compared to DB schemes.

Under Article 4 TFEU EU action for completing the internal market has to be appraised in the light of the subsidiarity principle set out in Article 5(3) TEU. EU level action can add value substantially because action by MSs alone will not: i. remove obstacles to cross-border activities; ii. ensure a higher EU-wide minimum level of consumer protection; iii. take into account positive externalities arising from scale economies, risk diversification and innovation inherent to cross-border activity; iv. avoid regulatory arbitrage between financial services sectors; v. avoid regulatory arbitrage between MSs; and vi. take into account interests of cross-border workers.

Under the proposed action, MSs retain full responsibility for the organisation of their pension systems as well as for the decision on the role of each of the three pillars of the retirement system in individual MSs. The revision does not call this prerogative into question. Neither does the revision cover issues of national social and labour, fiscal or contract legislation.

The proposal takes account of the **principle of proportionality,** as enshrined in Article 5(4) TEU, being adequate to reach the objectives and not going beyond what is necessary in doing so. The selected policy options seek to strike the right balance between public interest, protection of IORP members and beneficiaries, as well as the costs for IORPs, sponsors and supervisors. Although IORPs are not SMEs - many IORPs satisfy the criterion of staff headcount to be defined as SMEs but exceed the thresholds for annual turnover and/or annual balance sheet – it is important that regulation properly takes into account the nature of their activities and the fact that the scale and complexity of IORPs' activities is generally less than that of other financial institutions. The envisaged requirements have been carefully considered, crafted as minimum standards and tailored to IORPs' specificities.

The proposed action takes into account proportionality in each of the operational objectives in the following manner: i. governance functions have been limited to those that essential for IORPs; ii. documentation of own-risk assessment has been streamlined to the specificities of IORPs; iii. mandatory appointment of a depository is limited to DC schemes rather than for all IORPs; iv. pension benefit statement is limited to maximum two pages, focuses on essential information and does not prevent IORPs from using additional types of disclosure following national requirements and their own communication style; v. new supervisory powers are only granted to the extent that they are necessary to effectively supervise IORPs' activities; vi. supervisory reporting is not harmonised so as to respect different national supervisory approaches; and vii. removal of prudential barriers for cross-border IORPs is limited to those that have raised the most important problems for stakeholders.

4. OBJECTIVES

4.1. General objective

The general objective of this initiative is to facilitate the development of occupational retirement savings. This is in line with the Commission's 2012 White Paper "*An Agenda for Adequate, Safe and Sustainable Pensions*" in which it announced a set of 20 initiatives aimed at helping the MSs to better balance time spent in work and in retirement and to develop complementary private retirement savings. The White Paper mentions that the review of the Directive would make occupational retirement provision more efficient and safer. This would make a decisive contribution to pension adequacy and sustainability. In its resolution of 21 May 2013, the European Parliament considers that this proposal should strengthen prudential standards for governance and risk management and transparent information disclosures.

4.2. Specific objectives

An enhanced role of occupational retirement savings requires better access to supplementary schemes, including cross-border ones. This can be facilitated if employers can effectively supply complementary private retirement savings and if people trust pension schemes to deliver what they promise. Accordingly, this proposal – aiming to further facilitate cross-border activity and reinforcing safety by strengthening member protection – has four specific objectives: i. remove remaining prudential barriers for cross-border IORPs; ii. ensure good governance and risk management; iii. provide clear and relevant information to members and beneficiaries; and iv. ensure that supervisors have the necessary tools to fulfil their tasks.

4.3. Operational objectives

Eight operational objectives have been identified to attain the specific objectives. Remaining prudential barriers can be removed by taking away the extra requirements for cross-border IORPs and by clarifying definitions and procedures for cross-border activity. Better governance can be achieved with three complementary and mutually reinforcing operational objectives: (i) ensure that IORPs are managed professionally; (ii) require documentation concerning risk management; and (iii) protect assets from operational risk. Information to members can be made clearer and more effective by providing a simple statement with essential information about pension benefits on a yearly basis. Ensuring that supervisors have the necessary tools to effectively supervise IORPs can be achieved by granting them new powers in relation to chain-outsourcing and stress testing and by making sure that supervisors have sufficient powers to verify compliance with prudential and transparency requirements.

Policy options

4.4. Removal of additional requirements for cross-border activity

In considering the available policy options the appropriate level and focus of further approximation of national laws should be assessed. The options under consideration are:

Option 1 – **No policy change**: different quantitative investment limits; more stringent rules for the funding obligation for cross-border IORPs.

Option 2 – **Remove additional requirements from the Directive**: no national quantitative investment limits; same conditions to restore full funding for cross-border and domestic IORPs.

The table below summarises the analysis of the policy options. Option 2 is the preferred option because effectively addressing the problem requires changes in the legal framework.

Comparison of policy options against effectiveness, efficiency and coherence criteria

	Effectiveness **Facilitate cross-border activity**	**Efficiency**	**Coherence**
Option 1	0	0	0
Option 2	++	++	++

4.5. Clarifications of definitions and procedures for cross-border activity

To attain this operational objective, the following options were considered:

Option 1 – **No policy change:** maintains unclear definitions and procedures for cross-border activity (different interpretations of the definitions of cross-border activity, no provisions on cross-border transfers of pension schemes, lack of clarity about the scope of prudential and social and labour law rules).

Option 2 – **Guidelines or recommendations** for better enforcement and implementation of the Directive.

Option 3 – **Clarification of definitions and procedures for cross-border activity in the Directive**.

The table below summarises the analysis of the policy options. Option 3 is the preferred option because it effectively solves the problems identified by stakeholders and would contribute to economic benefits for employers willing to join an IORP abroad.

	Effectiveness **Facilitate cross-border activity**	**Efficiency**	**Coherence**
Option 1	0	0	0
Option 2	0	--	0
Option 3	++	++	++

4.6. Ensure that IORPs are managed professionally

To attain this operational objective, the following options were considered:

Option 1 - **No policy change:** one governance function (actuarial function) for DB and hybrid schemes and no functions for DC schemes.

Option 2 – Add a risk management and an internal audit function: three governance functions for DB and hybrid schemes and two functions for DC schemes.

The table below summarises the analysis of the policy options. Option 2 is the preferred option because it improves the protection of members and beneficiaries by taking into account the different sizes and nature of IORPs, while not unduly increasing the administrative burden for IORPs and sponsors.

Comparison of policy options against effectiveness, efficiency and coherence criteria

	Effectiveness		**Efficiency**	**Coherence**
	More safety	**Facilitate cross-border activity**		
Option 1	0	0	0	0
Option 2	++	+	+	++

4.7. Require documentation of risk management

To attain this operational objective, the following options were considered:

Option 1 – **No policy change:** IORPs do not carry out a systematic self-assessment of their risk profile and do not communicate that assessment to their supervisor.

Option 2 – **Introduce a Risk Evaluation for Pensions report (REP) to document the IORP's own risk assessment and as part of that require qualitative descriptions of four key elements determining the funding position**: (i) explicit valuation of margin for adverse deviation from best estimate as a risk buffer in calculation of technical provisions; (ii) qualitative evaluation of sponsor support accessible to IORP in case of funding shortfall; (iii) description of safety mechanisms available to IORPs in case of funding deficit, such as mixed benefits, discretionary benefits or ex-post benefit reductions; and (iv) qualitative evaluation of operational risks for all schemes. The REP is reported to the supervisor.

Option 3 – **Same as option 2 plus common reporting on national solvency rules:** require DB and hybrid schemes to report to supervisor in a common format the value of their assets and liabilities following national requirements and require them to quantify, where applicable, security- and benefit adjustment mechanisms.

The table below summarises the analysis of the policy options. Options 2 and 3 would both improve the governance of IORPs. But option 2 is the preferred option because it is expected to be more efficient for employers/IORPs as it: (i) it leaves sufficient flexibility for IORPs to describe their particular situation in a way that reflects the nature, scale and complexity of their activities; and (ii) it is expected to be considerably less costly than option 3.

Comparison of policy options against effectiveness, efficiency and coherence criteria

	Effectiveness		Efficiency	Coherence
	More safety	**Facilitate cross-border activity**		
Option 1	0	0	0	0
Option 2	+	+	+	+
Option 3	++	+	-	+

4.8. Protect assets from operational risk

To attain this operational objective, the following options were considered:

Option 1 – **No policy change:** IORPs are not required to appoint a depository; no provisions on the safe-keeping and oversight of assets functions.

Option 2 – **Strengthen the safe-keeping and oversight of assets functions**; this means (i) financial instruments have to be subject to due care and protection; (ii) records have to be kept, to be able to identify all assets at any time and without delay; (iii) all necessary measures need to be taken to avoid any conflicts of interest or incompatibility; (iv) depositories or trustees need to carry out instructions of the IORP, unless they conflict with the applicable national and/or EU regulations; (v) ensure that in transactions involving the assets of IORPs any consideration is remitted to it within the usual time limits; and (vi) ensure that income produced by assets is applied in accordance with all national and/or EU regulations.

Option 3 – **Strengthen the safe-keeping and oversight of assets functions and make the appointment of a depository compulsory for all IORPs:** same as option 2 but appointment of a depository is compulsory.

Option 4 – **Strengthen the safe-keeping and oversight of assets functions and make the appointment of a depository compulsory for pure DC schemes:** same as option 3 but appointment of a depository is compulsory for pure DC schemes.

The table below summarises the analysis of the policy options. Option 4 is the preferred option because it is expected to contribute to the gain for employees in terms of better governance in a proportionate manner by avoiding unnecessary duplication of protection against operational risk.

Comparison of policy options against effectiveness, efficiency and coherence criteria

	Effectiveness		Efficiency	Coherence
	More safety	**Facilitate cross-border activity**		
Option 1	0	0	0	0
Option 2	+	0	-	0

Option 3	++	0	--	++
Option 4	++	0	+	++

4.9. Make available an annual pension benefit statement

To attain this operational objective, the following options were considered:

Option 1 – **No policy change**: generic scheme information is provided in most cases on request; personal information is limited; no obligatory pre-enrolment information and no common template.

Option 2 – **Personalised information for all stages**: generic and personal information is provided once a year; pre-enrolment information, but no common template.

Option 3 – **Standardised annual Pension Benefit Statement (PBS) for all stages**: same as option 2 but with a common template. A short and standardised annual PBS would contain both personalised and generic information about the pension scheme. The PBS would be produced according to a standard template of two pages to be fine-tuned by EIOPA in a delegated act. The PBS would be the first layer in a modern multi-layered approach to communication, which enables national specificities to be described in-depth in subsequent layers.

The table below summarises the analysis of the policy options. Option 3 is the preferred option because it would enable members and beneficiaries to have a personalised overview of their rights and entitlements.

Comparison of policy options against effectiveness, efficiency and coherence criteria

	Effectiveness		Efficiency	Coherence
	Provide clear and relevant information	**Facilitate cross-border activity**		
Option 1	0	0	0	0
Option 2	+	-	+	+
Option 3	++	++	+	++

4.10. Ensure supervision of chain outsourcing and the possibility to require stress tests

To attain this operational objective, the following options were considered:

Option 1 – **No policy change**.

Option 2 – **Give supervisors the same powers vis-à-vis subcontractors as vis-à-vis service providers and the possibility to require stress tests**; no harmonisation of supervisory reporting.

The table below summarises the analysis of the policy options. Option 2 is the preferred option because it would increase safety for members and beneficiaries through better supervision of IORPs and supervisors would have appropriate tools at their disposal to do their job.

Comparison of policy options against effectiveness, efficiency and coherence criteria

	Effectiveness		**Efficiency**	**Coherence**
	More safety	**Facilitate cross-border activity**		
Option 1	0	0	0	0
Option 2	++	+	++	++

4.11. Ensure supervision of requirements on governance and transparency

To attain this operational objective, the following options were considered:

Option 1 – **No policy change**.

Option 2 – **Give supervisors the power to supervise the proposed requirements on governance and transparency**; no harmonisation of supervisory reporting.

The table below summarises the analysis of the policy options. Option 2 is the preferred option because it would enable supervisors to supervise IORPs effectively, which is coherent with other financial sectors in the EU.

Comparison of policy options against effectiveness, efficiency and coherence criteria

	Effectiveness		**Efficiency**	**Coherence**
	More safety	**Facilitate cross-border activity**		
Option 1	0	0	0	0
Option 2	++	+	++	++

5. ANALYSIS OF MAIN IMPACTS OF THE PREFERRED POLICY OPTIONS

Although the proposed action involves short-term adjustments costs, the benefit of the entire package of preferred options is expected to outweigh the costs in the medium to long term.

5.1. Economic benefits

For employees

The proposal is expected to provide significant economic benefits to employees. Better governance is likely to increase risk-adjusted investment returns which help to achieve efficient outcomes in terms of retirement income or contributions. Better communication will help individuals make more informed decisions about their retirement financing. Cross-border IORPs are likely to bring additional efficiency gains, scale effects for small workforces and for mobile workers a 'one-stop-shop' could be created for their pension arrangement.

For employers

The proposed action is expected to benefit employers and these might be even more pronounced for SMEs and multinationals:

Companies operating on a small or local scale could save costs by joining an existing IORP. Better governed and more efficient IORPs are expected to lessen a burden for their sponsor. Moreover, companies operating on a small or local scale where no deep and efficient IORP market exists could benefit from joining an existing IORP abroad rather than setting it up locally. Indeed, IORPs established in MSs with established pensions expertise might extend their service to sponsors in other MSs. The Commission Services are aware of recent cases, where the social partners for SMEs operating in one MS had the intention of setting up an IORP in another MS, largely to due product unavailability in the local market.

Many multinationals operate an international patchwork of local pension funds. This increases complexity, leading to less transparency, hidden risks, inconsistencies and inefficiencies. Companies can avoid this by merging local pension funds into one IORP.

For SMEs

IORPs are formally not SMEs because they generally hold assets above the threshold. Many are, however, small financial institutions. Simplifying cross-border definitions and procedures is likely to benefit small IORPs even more than large IORPs because they have less financial capacity to absorb transaction costs. Sponsors that are SMEs, including groups of SMEs, will benefit from having easier access to IORPs already established in markets abroad, thereby avoiding much of the initial market entry cost and benefit from the law of large numbers.

For supervisors

The new regime is likely to require greater supervisory resources. However, the extent that this reflects a change in costs for supervisors depends strongly on pre-existing national regimes, which may already have resources for targeting the quality of supervision of IORPs.

For Member States' budgets

The proposed action is expected to have two positive impacts on MSs' budgets. First, well-governed IORPs and a deeper market for IORPs strengthen private occupational retirement provision. This in turn contributes to alleviating the pressure on statutory schemes. The MSs that have the potential to benefit most are those where the IORP market is small in relation to the size of their economy. Second, well-informed individuals can be expected to make better decisions about their pension savings when they are young. As such this proposal is likely to lead to a situation in which better informed citizens exert less pressure on statutory pension systems which is beneficial for fiscal sustainability.

5.2. Social benefits

The proposal is expected to have a significant positive social impact. First, the demand for any financial product is largely driven by trust and performance. The proposed action will make occupational retirement products more efficient and safer. It is therefore likely to contribute to increasing the coverage rate of complementary private retirement savings, thereby strengthening social protection and income equality in a rapidly aging society. Second, greater safety and awareness through more effective information disclosures will make the public better informed about the pensions gap. This incentivises individuals to take informed decisions about the amount of savings needed for an adequate pension and the choice of investments, in order to save efficiently. Third, the common format of the PBS is likely to support the functioning of the labour market for people who work in different MSs. Finally, more transparency will help social partners to subject the management of IORPs to greater discipline and thereby potentially enhance risk-adjusted investment returns.

5.3. Environmental benefits

The proposed action is not expected to have any significant direct environmental impact.

5.4. Costs

The expected cost of the proposed action is an increase of the administrative burden mainly as a one-off adjustment cost in the short-term, and somewhat higher recurrent costs in the new regime. An estimate of the IORP industry of the administrative burden has pointed to three elements that were expected to be the most expensive. The proposed action avoids the two most costly elements by taken into account proportionality in the sense that IORPs are not required to report common quantitative funding elements in the REP and that they can reduce the governance functions to two. DC schemes in some MSs are expected to incur an additional cost from the appointment of a depository.

5.5. Macro-economic impact

The proposed action is not expected to have any significant direct macroeconomic impact, although three indirect benefits might be expected. First, good governance and risk management of IORPs is expected to reinforce their role as long-term investors in the European economy by avoiding an excessive focus on risk-return profiles in the short-term. Second, better performing and safer retirement products are also expected to increase staff motivation and impact labour productivity positively. Third, more efficient occupational pensions, in terms of attaining a higher level of risk-adjusted returns on assets, will contribute to support the purchasing power of the retired population.

5.6. Impact on third countries

The proposed action does not concern a policy field in which international regulatory approaches exist. It is not expected to have any significant direct impact on third countries.

5.7. Overview of benefits and costs

The benefits of the package of preferred options are mainly economic, as well as social given the importance of an adequate and sustainable retirement system in an aging economy.

Although the proposed action involves short-term adjustments costs, the benefit of the entire package of preferred options is expected to outweigh the costs. The financial gains for the employees are expected to be significant. Employers can expect to realise further scale economies and may pass-on at least some of the additional administrative burden to scheme members and beneficiaries. Overall the proposed action is likely to be value creating in an ageing economy. It can help attain a higher social outcome without undermining economic growth.

6. MONITORING AND EVALUATION

The Commission Services will prepare an Implementation Plan where the following actions will be considered: meetings with MSs, exchange of best practices amongst all MSs, training programmes addressed to national authorities. A preliminary examination by EIOPA followed by an evaluation report by the Commission would also be considered and envisaged.

The evaluation of effects of the preferred policy options shall be carried out to see to what extent the anticipated impacts materialise. Therefore, an ex-post evaluation of the application of the revised Directive should take place five years after the adoption of the Directive. It shall take the form of a Commission report to the European Parliament, the Council, and the European Economic and Social Committee. It may be accompanied, if necessary and in the light of developments, by policy recommendations or proposals for amendments to this Directive. EIOPA will collect the qualitative and quantitative data. The Occupational Pensions Stakeholder Group of EIOPA will also be consulted and the Commission's Financial Services User Group could also be involved. A Eurobarometer survey and a loose survey with IORPs, employers, members and beneficiaries will also be considered. Employers could be targeted for questions concerning possible difficulties of setting up pension schemes abroad. Improved disclosures by IORPs, in terms of quantity (i.e. increased number of statements or reports) and quality of the information disclosed, would be indicators of better transparency. On governance, the increase of specific requirements for functions would be assessed. For cross-border provisioning, the number of cross-border IORPs would be taken into account.