

**Opinion of the European Economic and Social Committee on the ‘Proposal for a Directive of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision’**

COM(2014) 167 final — 2014/0091 (COD)

(2014/C 451/18)

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On 14 April 2014 the European Parliament and on 12 June 2014 the Council decided to consult the European Economic and Social Committee, under Article 304 of the TFEU, on the:

*Proposal for a Directive of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision (recast).*

COM(2014) 167 final — 2014/0091 (COD).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 20 June 2014.

At its 500th plenary session, held on 9–10 July 2014 (meeting of 10 July), the European Economic and Social Committee adopted the following opinion by unanimously.

## 1. Conclusions and recommendations

1.1 In view of the need for faster and further development of occupational pensions as part of EU Member State pensions systems, the Committee supports most of the proposals set out in the European Commission’s documents on the draft IORP II directive.

1.2 The Committee is pleased that most of the recommendations in its opinion on the White Paper on ‘An Agenda for Adequate, Safe and Sustainable Pensions’<sup>(1)</sup> have been taken up in the Commission’s proposal<sup>(2)</sup>.

1.3 Seeing the need for — both collective and individual — additional forms of pension savings and particularly given the forecasts of lower public pensions, the EESC stresses that occupational pension schemes, created as a result of decisions by the social partners, can play a very important role in ensuring that employees have additional pension provision.

1.4 However, the Committee has reservations about some of the proposed directive’s provisions.

1.4.1 The EESC disagrees with the approach to IORPs purely as financial market institutions, which fails to acknowledge and respect their specific circumstances. IORPs are institutions which perform an important social function. They are to a large extent responsible for occupational retirement provision and have become an indispensable addition to public pensions systems. The proposed directive must take account of the key role played by the social partners in establishing and managing programmes and the fact that the underlying principles of their operations have to reflect national social security and labour law.

1.4.2 A one-size-fits-all approach is not the right way of achieving the Commission’s objectives given the numerous fundamental differences between pension schemes in individual Member States and occupational pension schemes, something which has a significant impact on the differing status, rights and expectations of members and beneficiaries of such schemes. For example, the EESC takes a critical view of the proposal to introduce a uniform template for information sent to all members of occupational pension schemes throughout the European Union. Given the broad diversity that exists, the Committee believes it is not possible to create a single form which would provide each of these members and beneficiaries with the information that is most essential and appropriate for them.

<sup>(1)</sup> COM(2012) 55 final.

<sup>(2)</sup> In the opinion, see OJ C 299/21, 4/10/2012, pp. 115-122. Among other things, the EESC pointed out that ‘consideration should be given ... not only to aspects related to pension funds’ cross-border activities and worker mobility but also to the issues of pension body supervision and oversight, administrative costs and consumer information and protection’.

1.4.2.1 The Committee emphasises that far-reaching standardisation of occupational pension schemes could be costly, and rather than the further development expected by the EESC, could lead to their gradual disappearance.

1.4.3 The Committee emphasises that the overarching goal of pension schemes, including occupational pension schemes, is to ensure an adequate and stable level of benefits for their beneficiaries. Supporting capital markets, including long-term investments, can only be considered as a secondary objective, conditional on not being detrimental to the interests of scheme members and beneficiaries. While supporting the possibility of IORPs playing a greater investment role in 'instruments that have a long-term investment profile', the EESC is at the same time firmly opposed to the European Commission proposal that '*Member States shall not prevent institutions from ... investing in instruments that ... are not traded on regulated markets, multilateral trading facilities or organised trading facilities*'. Access to ongoing objective evaluation of a scheme's assets as well as to reliable and updated information on the financial situation of an issuer of the securities in which a pension scheme's assets are invested is a fundamental prerequisite for the financial security of the scheme's members and beneficiaries. However, Member States should be free to impose or not to impose any restrictions in this matter after consultation with social partners.

1.4.4 A detailed discussion of the above reservations and the EESC's remaining observations on the proposal for a directive are set out in the following sections of this opinion.

## 2. Commission Proposal

2.1 The Commission's proposal is a revised version of Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision (IORP) <sup>(3)</sup>, which has been in force since 2005. It simultaneously codifies the unchanged provisions of the current directive and amends it.

2.2 As the Commission points out, the general objective of this proposal is to make it easier to save for retirement in the form of an occupational pension. The Commission also defines four specific objectives:

- removing remaining prudential barriers for cross-border IORPs;
- ensuring good governance and risk management;
- providing clear and relevant information to members and beneficiaries;
- and ensuring that supervisors have the necessary tools to effectively supervise IORPs.

2.3 The Commission's proposal was published on 27 March 2014 as part of a package of instruments to ensure long-term financing of the European economy. The explanatory memorandum in the proposal repeatedly emphasises the need to strengthen IORP capacity to invest in assets with a long-term economic profile.

2.4 In support of its proposal, the Commission argues, among other things, that unless the European Union sets up an up-to-date regulatory framework now, there is a risk of Member States developing increasingly divergent legal solutions, resulting in barriers to cross-border IORP activity, while failing to deliver a higher EU-wide level of consumer protection or lead to economies of scale. The Commission also believes that a robust regulatory framework for IORPs can foster their development in countries where at present they barely exist.

2.5 The Commission estimates that implementation of the directive will entail average additional costs of EUR 22 per member as well as annual costs of EUR 0,27-0,80 per member.

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<sup>(3)</sup> See: OJ L 235, 23.9.2003.

### 3. General comments

3.1 Reduced levels of coverage under public schemes in many Member States mean that an increasingly important role in ensuring decent pensions will be played by additional solutions, which are often supported by the Member States through tax relief. Occupational schemes are particularly important, as they have characteristics which individual retirement savings lack. These schemes are fully or largely financed by employers, at the same time as being readily available to employees, including those on lower salaries, and having lower unit costs due to economies of scale. Owing to a scheme's internal rules adopted by the social partners, sometimes an additional pension is provided even for periods in which the employee was unable to work (e.g. illness, maternity leave). When formulating an investment policy, the social partners in some schemes introduce not only economic criteria, but also for example criteria of an ethical nature, thus promoting among businesses the values they hold dear. In view of the fact that occupational pension schemes provide an additional pension only for a small proportion of EU citizens (they currently play a significant role only in a few Member States, while they are unknown in many others), the Committee supports initiatives to develop IORPs.

3.2 Occupational pension schemes benefit both employees and sponsors of such schemes, i.e. employers. Pensions rights acquired by employees are in effect an additional form of remuneration for work. For employers, pension schemes are a means of building a long-term relation with their staff. Generally such schemes inspire greater commitment to a company on the part of its employees and reduce staff turnover. The Committee therefore emphasises the need for great caution when adopting new legislation in this field, so as not to diminish the attractiveness of IORPs as a result of imposing additional financial burdens or red tape.

3.3 The EESC is aware that the European Commission currently does not have the tools to obtain comprehensive and objective information on the costs of the planned solutions and must take as its basis the information provided by the relevant IORPs. Furthermore, the EESC finds it regrettable that the costs of the proposed regulations were averaged and, what is more, there is a lack of information about the individual components of these overall costs. As a result, it is not possible to say which costs may arise for employers or employees from each proposal and what differences might emerge between individual countries.

3.4 Given that the proposed directive would introduce new requirements for IORPs entailing additional costs, the Committee would like to see the introduction of possible exemptions from the scope of this directive in the initial phase of an IORP (up to 12 months). This would allow the sponsor to set up a IORP without the need to incur the relatively high administrative costs from the first day of the IORP's operations, and later to take the decision as to whether it wishes to continue its activities by financing its 'own' IORP or whether it prefers to join an IORP which already exists. The EESC believes that this would be a factor in an employer's decision to set up a IORP.

3.5 The Committee wishes to highlight the vital role played by the social partners both in setting up an IORP and in managing it. The Committee feels that the autonomy of the social partners in terms of determining pension scheme solutions must be preserved. The legislative framework should merely establish minimum standards which partners responsible for schemes would be obliged to comply with. The EESC also stresses that in many Member States there are very close links between occupational pension schemes, labour law, social security law and rules determining the role of the social partners. In the proposal under review the EESC feels that there is an attempt to side-line the social partners, who often have many years of experience in developing occupational pension schemes, despite the declaration in Article 21(2) of the draft proposal that the 'Directive is without prejudice to the role of social partners in the management of the institutions'. IORPs cannot simply be seen as financial institutions, as this proposal does. They are also part of the social safety net, actively developed and managed by the social partners. The Committee therefore reiterates the position set out in its previous opinion on the White Paper<sup>(4)</sup>.

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<sup>(4)</sup> In that opinion, the Committee was 'in favour of occupational funded pension schemes, established and administered by employers and employee representatives', and called 'on the Commission to provide support to the social partners to bolster their administrative capacity in this area'.

3.6 The EESC underlines that relations between a IORP and a scheme's members and beneficiaries cannot be treated in the same way as relations between a financial institution and its clients (consumers).

3.7 The Committee welcomes the Commission's decision not to introduce solutions for occupational pension schemes intended to maintain 'a level playing field with Solvency II' <sup>(5)</sup>, as recommended in its opinion on the White Paper <sup>(6)</sup>. The EESC emphasises that, as regards quantitative requirements, aligning provisions in the draft directive with those of the Solvency II directive (methods of evaluating assets, and the requirement for a closer correlation between the amount of capital and risk levels) would have a detrimental impact on occupational pension schemes due to increased capital requirements and operating costs, as well as possible disruption to the allocation of capital.

#### 4. Specific comments

##### 4.1 *Cross-border activities*

4.1.1 The EESC emphasises that all aspects of the cross-border activities of IORPs, specified in Articles 12 and 13 of the draft directive, must be based on the needs of employers setting up a scheme and their employees, and must serve their interests. Therefore decisions on whether to undertake such activities should be taken by the social partners setting up the scheme.

4.1.2 The Committee welcomes the introduction of the possibility to transfer pension schemes to other institutions in other Member States, subject to prior authorisation by the competent supervisory authority of the receiving institution, and approval by the members and beneficiaries concerned.

4.1.3 The Committee is in favour of measures to support cross-border aspects of IORP activity, and emphasises that it is very important to promote and propagate IORPs in countries where this form of pensions scheme is non-existent or is only just beginning to emerge, if the occupational pension sector is to make significant progress.

4.1.4 The EESC feels that allowing IORPs to invest in other Member States purely in accordance with the rules of their home countries is a positive step facilitating IORP activity on a common European market.

##### 4.2 *Management and risk management*

4.2.1 The EESC endorses the proposal for greater transparency in terms of the remuneration of persons holding key positions in IORPs as long as the different types of governance of occupational retirement provision are taken into account.

4.2.2 The Committee believes that in the event that asset management is carried out on the basis of outsourcing, the remuneration rules should be disclosed, as should the amount received by the managing company, but not the remuneration of selected employees in that company. The Committee takes a critical view of the plan to extend the principle of transparent remuneration policies to employees of companies managing schemes on the basis of outsourcing. This could represent a serious barrier to finding companies to take on such tasks, particularly when it comes to managing the assets of a small pension scheme.

4.2.3 The Committee welcomes other proposals to further regulate the outsourcing of pension scheme management and the supervision of this outsourcing, but recommends caution when defining the obligations which have to be met by these managing companies.

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<sup>(5)</sup> Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), (OJ L 335/1, 17.12.2009).

<sup>(6)</sup> In its opinion on the White Paper, the Committee was 'seriously concerned about some of the proposals for occupational pensions. As pension schemes are very different from life insurances services, the Committee doesn't support the stated aim of reviewing the IORP Directive, to maintain "a level playing field with Solvency II", but recommends introducing specifically designed measures for securing pension fund assets after previous consultation of the social partners and other stakeholders.'

4.2.4 With regard to the proposal to define criteria for fit and proper persons to actually manage the institution and persons to fulfil other key functions, the EESC considers that these provisions should take into account the specific features of IORPs and the social partners' long-standing role in IORP management (e.g. through the right to appoint their own representatives as members of bodies managing or supervising IORPs). After all, IORPs are not typical financial institutions geared to profit-making, but organisations monitored by employers and employees. For obvious reasons, they are keen to keep organisational costs to a minimum. Skills requirements for IORP management functions should therefore take this into account, because provisions may not restrict the role played by the social partners in the pension scheme management process any more than the current system.

4.2.5 The Committee proposes that the skills assessment carried out for managers be applied to the entire managing or supervisory body, and not individual people. The basis for carrying out this proposal could be a separate definition in Article 23 of the requirements for people managing an institution and people playing key roles in it. Such a solution would allow the continued representation of the social partners in an IORP's managing bodies while at the same time raising the requirements for people directly involved in the IORP's statutory activities.

4.2.6 The Committee emphasises that IORP management requirements must take into account the inherent specific characteristics of occupational pensions. In such schemes, there are three interlinked parties: the employer/sponsor, the employee/scheme member, and the IORP. On the one hand, this ensures a safer system due to mutual supervision by the different parties, while on the other it complicates matters as it means that legislation on financial institutions has to be combined with labour law, social security law and rules on cooperation between the social partners in the individual Member States.

4.2.7 The EESC is pleased to see that the European Commission is aware of the potential problems of tightening up IORP management requirements, and supports the provisions requiring governance systems to be proportionate to the nature, scale and complexity of IORP activities (Articles 22, 24, 25, 26 and 29).

4.2.8 The EESC feels that the priority for IORPs should be to safeguard the financial resources accumulated in pension schemes and an appropriate level of pension provision, to which a properly balanced investment policy contributes. Support for long-term investments should not obscure the main purpose of IORPs, which is to provide members with an income in their old age. The possibility to frequently and objectively evaluate a pension scheme's assets together with access to accurate updated information on the financial situation of issuers of the securities in which an IORP invests are prerequisites for secure investment of these assets.

4.2.8.1 The EESC takes a positive view of the proposal to allow investment of occupational pension scheme assets, without any obstruction on the part of Member States, in instruments that have a long-term economic profile.

4.2.8.2 However, the Committee is firmly opposed to the European Commission proposal that '*Member States shall not prevent institutions from ... investing in instruments that ... are not traded on regulated markets, multilateral trading facilities or organised trading facilities*'. The EESC notes that, in the case of defined contribution schemes, when ongoing assessment of assets value is not possible, such investments would be a very risky solution for scheme members. Any approach based on this type of investment policy would lose transparency due to the impossibility of providing members with accurate information on the value of accumulated funds and the expected benefits on reaching retirement age — something that is especially important for the members who bear the full investment risk. However the EESC believes that Member States should be free to impose or not to impose any restrictions in this matter after consultation with social partners.

4.2.8.3 The EESC is in favour of IORPs being able to invest in long-term infrastructure projects. However, it feels that investment without quantitative restrictions in such projects should be allowed only if publicly traded financial instruments (such as shares or bonds), or financial vehicles openly available on the financial market (e.g. various types of investment funds, publicly traded shares of companies investing directly in long-term projects) are used.

4.2.9 The EESC proposes that the Commission consider the possibility of amending Article 20(1)(d) of the draft directive, which lays down the rules for investing in derivative instruments. In the Committee's view, experience from the crisis justifies the need for a major curtailment of the current, very broad rule, according to which IORPs can invest in derivative instruments in order to 'facilitate efficient portfolio management'.

4.2.10 The Committee fully supports the introduction of depositaries for schemes in which members and beneficiaries fully bear the investment risk, and feels that depositaries are an essential means of safeguarding the assets of collective investment institutions in today's world.

4.2.11 The EESC approves the requirement for an effective actuarial function in schemes where members and beneficiaries do not bear all types of risk.

### 4.3 *Information for members and beneficiaries*

4.3.1 The Committee welcomes the requirement for a wider range of information to be made available to both members and beneficiaries, in line with its previous recommendations. It also welcomes the introduction of a requirement for IORPs to provide key information at least once every 12 months on e.g. scheme guarantees, total contributions, scheme membership costs, investment profile, past performance and pension projections.

4.3.2 The Committee has serious doubts as to whether the proposed idea of having a two-page statement of standardised information with a clear layout for the recipient is a feasible one. Different occupational pension schemes involve different types of risk for their members, who also have differing expectations of future pensions. Furthermore, rules on paying out the accumulated funds of occupational schemes are often determined by Member State legislation. The information sent to members and beneficiaries of such schemes should reflect these factors. In view of this, the EESC would like the proposed provisions to be amended, so that the process of standardising the information template sent to scheme members is spread over several stages, and the final design can be determined in a flexible way during that process. In the initial phase, work should begin on developing templates containing several types of information (at least two models, based on defined-contribution and defined-benefit approaches). They should then be piloted in selected Member States or IORPs, and only once relevant experience has been gathered would it be possible to begin work on the delegated act mentioned in Article 54.

4.3.3 The Committee believes that ultimately there should be at least two information templates — one for schemes based on defined contributions and one for schemes based on defined benefits. In addition, each Member State must have the possibility to supplement this template with several pieces of information which are vital for scheme members or beneficiaries, based on the specific nature of national rules.

4.3.4 The EESC considers many of the proposed provisions to be insufficiently precise, with the potential to mislead members or beneficiaries rather than providing them with accurate information.

4.3.4.1 The very title of this document (pension benefit statement) is confusing — at most it will be a statement of forecasted pension benefits. The document should therefore be renamed (for example) 'Current pension forecast'.

4.3.4.2 Article 48(1)(a) provides for the possibility of providing members with information on 'full guarantees'. This is a misleading term, which does not give potential members any idea of the pessimistic outlook in the case of the employer/ IORP sponsor going bankrupt. Such bankruptcy could result in the pension scheme being unable to pay beneficiaries. At the same time, in Article 48(2)(d) the Commission refers to 'benefit reduction mechanisms' — something which calls into question the existence of a full guarantee.

4.3.5 The Committee urges the Commission to be particularly cautious when drawing up the delegated act mentioned in Article 54, given the potential costs of such a solution. The burden of compiling information for scheme members or additional service costs arising from the need to provide additional explanations in the event of a single European template being inappropriate to the specific circumstances of a given scheme must not be allowed to significantly increase IORP costs. The EESC therefore suggests that when listing information requirements for scheme members, the Commission takes into account the nature of the schemes which they belong to.

#### 4.4 *Supervision of IORP activity*

4.4.1 Given the previous interpretation problems due to differing supervisory practices in the Member States, the Committee welcomes the efforts to more clearly define the areas of financial activity subject to supervision and to separate them from areas falling within the scope of social security and labour law.

4.4.2 The EESC also welcomes the plans to tighten up rules on interinstitutional exchange of information between the competent authorities supervising occupational pension schemes.

4.4.3 The EESC feels that the proposal to step up supervisory powers over IORPs is a rational one; this could involve additional information requirements. The provisions of the proposed directive in this field have achieved an appropriate level of flexibility, enabling specific supervisory measures to be adjusted to individual situations.

Brussels, 10 July 2014.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

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