



European Union Passes IORP II Directive

Modernized Rules for Occupational Pension Funds in Europe

On January 12, 2017, the long-awaited IORP II Directive entered into force. This will affect occupational pension schemes across all Member States in the European Economic Area. This Directive is the successor of the IORP I Directive, which dates from 2003, and includes new rules on institutions for occupational retirement provisions (“IORPs” or “pension funds”). The Directive is designed to improve the governance and transparency of IORPs across Europe, increase their use for cross-border activity, and support long-term investment by IORPs. Member states have to implement the IORP II Directive into their local acts and regulations no later than January 13, 2019.

IORPs

IORPs are pension funds managing collective schemes for employers that provide retirement benefits for their employees. They profit from the principles of free movement of capital and free provision of services in the EU. This means that IORPs can manage occupational pension schemes for companies

established in other EU Member States and could operate as a single pension fund for pan-European companies and their subsidiaries throughout the EU.

Rationale

The first IORP Directive was designed to provide a prudential framework for pension funds based on minimum harmonization that would encourage the establishment of IORPs. Despite the first IORP Directive, cross-border activity has been limited due to the differences in national social and labor laws. Furthermore, important prudential barriers remain that make it more expensive for IORPs to operate pension schemes across borders. In addition, the current minimum level of protection for members and beneficiaries needed to be improved. This was all the more important as longevity and market risks are increasingly borne by members and beneficiaries rather than the IORPs or the sponsor. To this end, as well as the need for long-term financing to strengthen the European economy, the European Commission introduced a new IORP Directive.

Objectives

The IORP II Directive has four specific objectives:

Clarifying Cross-Border Activities of IORPs. IORPs still need to be fully funded at all times, but the IORP II Directive allows IORPs to have deficits and implement recovery plans. Furthermore, the Directive sets outside the process to be followed in the case of transferring assets and liabilities on a cross-border basis.

Transfers are subject to authorization by the competent authority in the home Member State of the receiving IORP and the consent of the competent authority in the home Member State of the transferring IORP. The transfer itself and its conditions are subject to prior approval by a majority of the members and beneficiaries (or, when appropriate, their representatives) concerned.

Ensuring Good Governance and Risk Management. One of the key changes is the introduction of more detailed governance requirements on risk management, outsourcing, and internal audit. To this end, IORPs must clearly allocate and appropriately segregate responsibilities, and persons who effectively run the IORP should collectively be fit and proper to do so. In addition, IORPs will be obliged to apply and periodically review written policies on risk management, internal audit, actuarial and outsourced activities, and remuneration. Furthermore, IORPs are required to disclose their annual reports and accounts and must carry out a risk assessment at least every three years.

Providing Clear and Relevant Information to Members and Beneficiaries. Although the first drafts included much more detailed information obligations, the final IORP II Directive still includes several requirements concerning the content of the information as well as when the information should be provided. The information needs to be clear and adequate in order to support decision-making about retirement and ensure a high level of transparency throughout the various phases of a scheme (e.g., enrollment, membership, and

pre/post-retirement). In particular, information concerning accrued pension entitlements, projected levels of retirement benefits, risks, guarantees, and costs should be given. Prospective members to DC schemes need to be provided with past performance and cost structure information.

Ensuring that Supervisors Have the Necessary Tools to Effectively Supervise IORPs. Different scopes of prudential supervision between Member States could cause problems for IORPs; they need to comply with the prudential regulation of their home Member State while simultaneously complying with the social and labor laws of their host Member State. In order to reduce legal uncertainty, the Directive clarifies which areas are considered to be part of prudential supervision for the purpose of the Directive. In addition, Member States should assign the necessary powers to competent authorities to use preventive or concrete measures if an IORP breaches any of the Directive's requirements. Furthermore, in order to ensure effective supervision of outsourced activities, the competent authorities of Member States should have the power to request information from IORPs and service providers about any outsourced activity.

Concluding Remarks

The scope of the IORP II Directive is much broader and more detailed compared to the previous IORP Directive. However, whether the IORP II Directive will significantly affect current national law will vary depending on the Member State.

For the Netherlands, it appears that the impact of the Directive is mainly limited to the information requirements and their consequences for the content of the pension statements, which has to be provided annually to the pension fund members. The Dutch government is currently investigating the precise impact of the Directive, and they are expected to report to the Dutch parliament within the next couple of months.

Whether the United Kingdom will be required to implement the IORP II Directive, despite Brexit, will depend on the conditions of the negotiations for exit and new trade deals with the EU.

Lawyer Contacts

For further information or more detail on the impact of the IORP II Directive in a specific country, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our “Contact Us” form, which can be found at www.jonesday.com/contactus/.

Irene Vermeeren

Amsterdam

+31.20.305.4251

ivermeeren@jonesday.com

Cornelien Broersma

Amsterdam

+31.20.305.4247

cbroersma@jonesday.com

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