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[Table of Contents](#)

IORP II

1. [Update on the evaluation and review](#)

Financial Market Regulation

2. [DORA – New digital operational rules for IORPs](#)

Sustainable Finance Regulation

3. [PensionsEurope comments on the Platform on Sustainable Finance’s paper about Minimum Safeguards](#)
4. [EP plenary discussion of the Deforestation Regulation](#)

1. IORP II – Update on the evaluation and review

On 16 June 2022, the European Commission (EC) sent to EIOPA a [Call for technical advice \(CfA\)](#) regarding the evaluation and review of the IORP II Directive. The EC is asking EIOPA’s advice on several topics, including:

- the areas mentioned in article 62 of the IORP II Directive:
 - o the adequacy of the Directive from a prudential and governance point of view and the Directive’s impact on the stability of different types of IORPs; the Commission asks EIOPA to pay particular attention to the situation of “pure Defined Contribution (DC) schemes”
 - o cross-border activities and transfers – assessing the implementation and effectiveness of the Directives and identifying any obstacles
 - o the Pension Benefit Statement
- the assessment of possible options related to
 - o the need for and possible ways to adapt the regulatory framework to the shift from DB to DC schemes,

- an exploration of the ways to strengthen the sustainability aspects of the fiduciary duties and stewardship rules of pension funds, and
- the consideration of possible changes to prudential requirements to include diversity and inclusion issues in relation to management bodies. With regard to the latter of these matters, it should also be noted that EIOPA sent a [letter](#) on diversity in management bodies to the European Commission, the European Parliament, and the Council of EU, asking to amend the IORP II Directive (and Solvency II) by requiring IORPs to put in place a policy promoting diversity on management or supervisory bodies which includes a target for underrepresented gender in their management and supervisory bodies.

EIOPA must deliver the technical advice by 1 July 2023. This timeframe implies the IORP II Directive will not be reviewed by 13 January 2023, as set by the Directive itself. The current European Commission's mandate ends in 2024, thus leaving up to the next Commission the decision on the legislative proposal amending the IORP II Directive.

EIOPA kicked off the work on the CfA already in June and established a new project group composed of EIOPA's staff and National Competent Authorities (NCAs) under their policy steering group. The group started its work before the summer break and it is structured in 6 working areas, reflecting the areas listed by the EC Call for Advice (CfA). EIOPA is currently gathering data and evidence from the National Competent Authorities to support the preparation of the technical advice. A draft is expected to be put under consultation in late February 2023. EIOPA aims to consult widely, running a public consultation, requesting input from the Occupational Pensions Stakeholder Group (OPSG), and organizing a specific workshop.

2. DORA – New digital operational rules for IORPs

Risk management is a key component in pension funds' daily work. The pension funds are continuously and thoroughly considering all kinds of possible scenarios in their risk universe, particularly in the field of asset management. Taking care of operational risks is also vital, and in that category especially digital operational risks have gained importance. As the digital transformation of the pension sector accelerates, addressing possible new digital risks becomes more important.

While in many countries pension funds have had positive experiences with a principles-based approach in regulating digital operational resilience, they have also considered that some efforts from the EU in this field could be appropriate. And as the financial sector from large systemic risk banks to small pension funds is not homogeneous, a sector-specific Directive, at least for IORPs, would be more appropriate than a Regulation covering the whole financial services sector. As also the European Commission has correctly noted, significant differences exist between various financial entities in terms of size, business profiles and in relation to their exposure to digital risk meaning that also the consequences from cyber risks and ICT-related incidents faced by various financial entities differ greatly from one entity to another.

In that sense, it was disappointing that two years ago the Commission proposed a Regulation, 'Digital Operational Resilience Act' (DORA), to harmonise and strengthen the digital operational resilience requirements across the whole financial services sector. After two years of work and lobbying, the provisional agreement resulting from inter-institutional negotiations on the DORA Regulation can be found [here](#), and on the Directive [here](#). The plenary vote of the European Parliament has been scheduled for 9 November 2022.

It is positive that, at least, the DORA shall not apply to IORPs which operate pension schemes which together do not have more than 15 members in total, and there are also lighter rules for small IORPs which together have less than 100 members in total. Regarding all the IORPs, the DORA stresses the application of proportionality principle in their supervision, and it e.g. states that the supervisory authorities should fully take into account the specific nature, scale, complexity of the services, activities and operations and the overall risk profile of IORPs.

The DORA Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union (OJEU), and it shall apply from 24 months after the date of entry into force. So, if the DORA will be published on the OJEU at the of 2022, IORPs should be compatible with its requirements at the beginning of 2025.

3. PensionsEurope comments on the Platform on Sustainable Finance's paper about Minimum Safeguards

In July, the Platform on Sustainable Finance opened for consultation its [draft report](#) on minimum safeguards. The minimum safeguards set out in Article 18 of the Taxonomy Regulation require that companies implement procedures to comply with OECD Guidelines for multinational enterprises and the UN guiding principles on business and human rights. The report on minimum safeguards aims to provide advice on how compliance with minimum safeguards could be assessed. The Platform's advice will feed into the Commission's work on the usability of the EU taxonomy. On 6 September 2022, PensionsEurope provided an [answer to the consultation](#). The Report proposes two sets of criteria for the establishment of non-compliance with MS: one related to adequate due diligence processes implemented in companies (i.e. relying on corporate reporting and disclosure) and the other related to the actual outcome of these processes or the company's performance (i.e. relying on external checks on companies). PensionsEurope acknowledges that the Report tries to be as clear and thorough as possible, however minimum safeguards definitions could lead to differences in interpretation. Therefore, clarity and consistency should remain key elements during the development of MS. See below some of our key recommendations:

- It is crucial that information on due diligence processes becomes available under the CSRD, with assurance by an external auditor. A pension fund cannot check the due diligence processes of all investee companies. As such, this element of minimum safeguards can only become operational once CSRD reporting is fully in place.
- We urge the Platform and the European Commission to closely monitor how data providers are applying the MS screen and to what extent the MS assessments diverge
- We strongly support the conclusion that compliance with the CSDDD leads to a positive MS assessment. It could be helpful to clarify the relationship between the social Taxonomy and the MS under the environmental Taxonomy.

- It could be useful to discuss the relationship between the good governance requirements in the SFDR for Art. 8 and Art. 9 products and the MS requirements.

4. EP plenary discussion of the Deforestation Regulation

The ENVI Committee of the European Parliament has voted to include the financial sector in the Deforestation Regulation. The plenary vote took place on 13 September 2022.

The current regulation is possible to raise issues. Financial institutions would only be allowed to provide financial services to customers in case it is established that there is no more than a negligible risk that the customers' products or service cause or are linked to deforestation. This lack of more than negligible risk seems a very low and unclear threshold. The lack of more than negligible risk must also be demonstrated through documentation, so it seems that the burden of proof is on the financial service provider to demonstrate the customers do not cause or are linked to deforestation. Inclusion of the financial sector would lead to a significant administrative burden for all types of financial entities, it is particularly cumbersome for institutional investors and asset managers who hold portfolios with securities of hundreds or thousands of companies. Moreover, in contrast with CSDDD, this current regulation has no employee threshold, so even small IORPs are likely to fall into the scope.

For this reason, we decided to support the joint letter requesting to exclude the financial sector from the Deforestation regulation which was prepared in collaboration with other 7 financial services associations (EBF, EFAMA, InsuranceEurope etc.). Moreover, we contacted MEPs to raise awareness of the issue and advocate our position. Despite our efforts, the EP plenary voted in favour of the amendments. We are in contact with the other associations to coordinate our next steps. Advocacy towards the Council is envisaged.