PensionsEurope Newsletter 2024/01

1. IORPII directive review process and PE updated position paper

On 28 September 2023, EIOPA published its advice on the IORP II directive review. The European Commission is now assessing this advice and it is expected to issue its legislative proposal during the next legislative mandate. As discussed, and agreed in the IORP WG, the Board, and the GAM, the secretariat prepared an updated position paper concerning the IORP II directive review given the publication of EIOPA's advice. As already discussed, and agreed, this position paper is hugely based on our positions developed for our response to EIOPA's consultation on the issue.

The IORP WG worked, discussed, and approved the current version of this updated paper. The Board of Directors meeting which took place on 28 February also approved the paper. Now as agreed, the secretariat will prepare an executive summary of the paper as a tool to facilitate the use of this paper for our advocacy. This executive summary will be sent to the IORP WG in due time to get the necessary approval.

The Commission is also preparing a consultation on pensions, expected to be launched in late Spring 2024, which is likely to cover among other topics, the IORPII directive review.

2. Framework for financial data access (FIDA)

Council

The Spanish presidency published on 20 December 2023 its progress report on FIDA. It indicates that there seems to be a consensus among Member States for an alignment between FIDA and PSD3 rules regarding permission dashboard rules, FISP/AISP licensing requirements, disagreements remain on the degree of flexibility governing the Financial Data Sharing Schemes. It is also reported, that the broad scope of the proposal has also sparked debates among Member States with most of them considering instead a gradual step-by-step approach while some fear that a step-by-step approach could hamper innovation.

The Council resumed its scrutiny of the text, on 5 March 2024 to cover the provisions of FIDA that have not been yet discussed under the ES presidency. The Belgium presidency is willing to initiate a debate among MS on the scope of the proposal, outlining some possibilities regarding phase-in mechanisms with a) a market-led approach, and b) a legislator approach (either a sector-based, product-based approach or depending on the sensitivity of data involved).

PensionsEurope continues its advocacy to the Council and sent in January, its position paper to the Belgium presidency.

European Parliament

MEP Michiel Hoogeveen(ECR, NL) published its draft report on 18 December 2023 which foresees among other issues, provisions to avoid duplication of existing pension tracking services (AM 14, 19) or provisions to ensure that Gatekeepers under the DMA would be prevented from accessing data through FIDA provisions (AM 10,57,73,128).

The other 422 amendements (here and here) were circulated in mid-February. Some amendements touch upon the scope (article 2 of FIDA) with MEPs Markus Ferber (EPP, DE) and Engin Eroglu (Renew, DE) circumscribing the FIDA entity scope by including IORPs if accessible to all interested consumers, respectively at AM 264 and 265. Furthermore, a group of Italian MEPs from the ID group (Marco Zanni, Valentino Grant, and Antonio Maria Rinaldi) exclude pension rights in occupational pension schemes from the FIDA customer data scope (AM 239).

Moreover, other amendements are empowering the Commission to deliver level 2 measures, following EBA or EIOPA work such as AM 394, 399, and 400, regarding guidance on data use

The tentative date for the ECON vote is on 21 March 2024. However, there is uncertainty regarding whether there will be a vote as the last shadow rapporteurs meeting which took place on 28 February showed divergences among political groups. Thus, the vote can be postponed under the next legislative mandate.

PensionsEurope made outreach to APAs of all shadow rapporteurs, the Green policy advisor, and the ECR policy advisor whom we met in December 2023. We spoke with the APA of Ondrej Kovarik(Renew, CZ) on 22 January 2024 and with the APA of Frances Fitzgerald (EPP, IE) on 13 February 2024

3. Digital Operational Resilience Act (DORA) level 2 & 3 measures

First batch policy products

ESAs submitted on 17 January 2024, their final reports on draft RTS and ITS related to this first batch (3 RTS and 1 ITS), removing some granularity while keeping a very complex classification criteria system. The Commission is assessing the ESAs texts to adopt them as soon as possible as the DORA application date is approaching.

PensionsEurope both answered the ESAs consultation on this first batch and met EIOPA experts to discuss this topic end of last year. We are now, preparing a paper ahead of the Commission adoption.

Second batch policy products

ESAs launched on 8 December 2023, a consultation on this second batch (3 RTS, 1 ITS, and 2 guidelines), which PensionsEurope answered on 4 March 2024. Our answers highlight the lack of proportionality in the ESA approach and the need for a differentiated approach.

4. SFDR reviews

SFDR Level 1 Review

On 15 December 2023, we submitted our answer to the European Commission's targeted consultation on the implementation of the Sustainable Finance Disclosures Regulation (SFDR).

In our answer, we highlight that the implementation of the SFDR has led to many issues for pension funds, due to unclear definitions, a regulation targeted at consumers as retail investors rather than members and beneficiaries in collective schemes, as well as the lack of ESG data. To address these challenges, we propose the implementation of a dedicated sub-sectoral Regulatory Technical Standard (RTS) within the SFDR framework tailored to pension funds and their specificities.

We also concur with the EC's assessment that Articles 8 and 9 of the SFDR's current use as product labels can lead to greenwashing risks. Building a voluntary EU-level product categorisation system could help tackle this issue. If well-designed, it would allow for more comparability, which would benefit pension funds as customers on the capital market. It would also enable IORPs to communicate more effectively about their sustainability activities if they wish to do so.

On 31 January 2024, we organised a meeting with DG FISMA, Asset Management Unit, European Commission as part of the WG LTSI. We discussed the content of our answer to the consultation. The EC explained that they were still in the process of reviewing all answers. The EC proposed to organise a follow-up meeting in a few months once they have progressed in their work on the SFDR. No legislative proposal on SFDR level 1 review is expected during this mandate.

SFDR Level 2 review

On 4 December 2023, the ESAs published their Final Report on the draft RTS on the review of PAI and Financial Product Disclosures in the SFDR Delegated Regulation.

The EC is currently reviewing the draft RTS and will decide on its endorsement soon. The ESAs specified that the RTS and level 1 assessments are two separate exercises that run in parallel. This means that the RTS will be adopted before any review of the level 1 framework.

5. Withholding taxes (FASTER)

Council

Spanish presidency couldn't reach a general approach end of 2023 due to opposition from different Member States. Several Member States fear they could lose tax revenues with this new initiative as they believe it would put too much emphasis on CMU objectives and not enough on anti-tax abuse. The Ecofin report to the European Council on tax issues, published on 8 December 2023 is reporting the work conducted under the Spanish presidency.

The Belgium presidency resumed its work on 24-25 January 2024 to discuss a new compromise text introducing less FASTER opt-outs. It continued its work on 21 February 2024 to discuss among other issues, indirect investment provisions.

PensionsEurope circulated early January 2024, its position paper to the Belgium presidency, and drafted a document, reacting to the 13 November 2023 compromise text on FASTER from the Spanish presidency. This paper highlights that FASTER procedures should not just be available to fiscally transparent collective investment undertakings that are EU-regulated as AIF or UCITS was sent in mid-February 2024 to the Belgium presidency.

European Parliament

The European Parliament cannot amend tax files which are decided by unanimity at the Council. Thus, EP's opinion is non-binding but needed to go forward on the legislative process if Member states agree unanimously on the text.

Against this background, the European Parliament adopted in a plenary session, its opinion on 28 February 2024. Among other issues, the EP opinion changes the Commission proposal by requesting Member States to take the necessary actions to ensure that CFIs requesting relief on behalf of a registered owner verify the risks of residence and citizenship by investment schemes that present a potentially high risk.

6. Corporate sustainability due diligence (CSDDD)

The Council and the European Parliament reached on 14 December 2023, a provisional deal on the corporate sustainability due diligence directive (CSDDD).

Background

The due diligence directive will set obligations for large companies regarding actual and potential adverse impacts on human rights and the environment, concerning their own operations, those of their subsidiaries, and those carried out by their business partners. The due diligence directive lays down rules on obligations for large companies regarding actual and potential adverse impacts on the environment and human rights for their business chain of activities which covers the upstream business partners of the company and partially the downstream activities, such as distribution or recycling. The directive also lays down rules on penalties and civil liability for infringing those obligations; it requires companies to adopt a plan ensuring that their business model and strategy are compatible with the Paris Agreement on climate change.

Scope of the directive

The agreement fixes the scope of the directive on large companies that have more than 500 employees and a net worldwide turnover of €150 million. For non-EU companies, it will apply if they have a €300 million net turnover generated in the EU, 3 years from the entry into force of the directive. The Commission will have to publish a list of non-EU companies that fall under the scope of the Directive.

Financial Sector

According to the deal reached, the financial sector will be temporarily excluded from the scope of the directive for all the downstream activities, but there will be a review clause for possible future inclusion of this sector based on a sufficient impact assessment. As a result, pension funds are out of the scope for the time being. Financial entities above the thresholds must only comply with due diligence obligations for upstream activities. Moreover, firms, including financial sector, will also have to adopt a plan ensuring their business model complies with limiting global warming to 1.5°C.

Climate change and civil liability

On civil liability, the agreement reinforces the access to justice for persons affected. It establishes a period of five years to bring claims by those concerned by adverse impacts (including trade unions or civil society organisations). It also limits the disclosure of evidence, injunctive measures, and cost of the proceedings for claimants.
As a last resort, companies that identify adverse impacts on the environment or human rights by some of their business partners will have to end those business relationships when these impacts cannot be prevented or ended.

Penalties

For companies that fail to pay fines imposed on them in the event of a violation of the directive, the provisional agreement includes several injunction measures and takes into consideration the turnover of the company to impose pecuniary penalties (i.e. a minimum maximum of 5% of the company's net turnover). The deal includes the obligation for companies to carry out meaningful engagement including a dialogue and consultation with affected stakeholders, as one of the measures of the due diligence process.

Public procurement

The deal establishes that compliance with the CSDDD could be qualified as a criterion for the award of public contracts and concessions.

Next steps

This political agreement needs to be endorsed and formally adopted by institutions. The latest attempt by the Belgian presidency to endorse the text at COREPER failed on 28 February. Thus, in the Council difficulties remain in getting the necessary qualified majority voting because Germany and Italy object despite the efforts of the Belgian presidency. Without a breakthrough, the law could be put on hold until the next mandate.

7. ESG ratings

On 13 June 2023, the European Commission adopted a proposal on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities.

PensionsEurope submitted its answer on 1st September 2023.

The EP and Council reached their provisional agreement on 5 February 2024. The final text was then approved in COREPER on 14 February. On 22 February, the ECON Committee in the EP voted on the agreement. The vote on the agreement in the EP plenary is scheduled for 22 April 2024, but is likely to be postponed. The final text should be published in the Official Journal towards the end of the year.

The agreement on ESG ratings includes some clarification on the territorial scope of the legislation. It also specifies the type of ratings included in the regulation, outlining especially that private ratings used exclusively for internal purposes or for providing in-house or intra-group financial services or products are not in scope.

The text also proposes several measures to improve the transparency of ESG rating, including promoting the double materiality approach, favouring the separation of E, S, and G ratings, or explaining in the case of an aggregate rating the weight given to each factor.

The text also includes a lighter, temporary, and optional regime for smaller ESG ratings for three years, and additional measures to tackle conflict of interests.

8. EMIR review

On 7 February 2024, the Council and the Parliament reached a provisional political agreement on a review of the European market infrastructure (EMIR) regulation and directive which lay down and improve rules on over-the-counter (OTC) derivatives, central counterparties (CCPs) and trade repositories, notably by:

- streamlining and shortening procedures
- improving consistency between rules
- strengthening CCP supervision
- requiring market participants of substantial systemic importance, who are subject to a clearing obligation, to have an operationally active account at an EU CCP.

The provisional agreement was confirmed on 14 February at the COREPER level. It strengthens cooperation, coordination, and information sharing among supervisors and ESMA while strengthening ESMA's role.

An Active Account Requirement (AAR) will require certain financial and non-financial counterparties to have an account at an EU CCP and regularly clear through it at least five trades in each of the most relevant subcategories per class of derivative contract. An account is considered active if it posts initial and daily variation margins, has in place the necessary IT connectivity, internal processes, legal documentation, stress tests, and can demonstrate its functioning would not be affected in the event of a significant and sudden increase in clearing activity.

Finally, the Commission secured a clear mandate to adopt further measures if necessary, in several years to address EU reliance on third-country CCPs

The largest non-financial counterparties (NFCs) should be monitored effectively regarding intragroup transactions, as they might contribute to financial stability risks. Clients of the EU CCPs, as well as recognised third-country CCPs, should be informed about an option to clear a derivative contract in an EU CCP, which should be transparent on fees, risks associated with the service provided, and volumes of cleared transactions.

The EP ECON committee voted on 4 March 2024 to confirm the provisional agreement. The tentative date for the plenary vote is on 22 April 2024.

9. Standing Committee Future of Pensions – ''Road to DC: understanding the shift''

In June 2023, we relaunched the work of the SC Future of Pensions. The role of the SC is to consider the current and future challenges affecting occupational pensions and to shape PensionsEurope's strategy to address them.

We adopted a one-year plan (June 2023 – April 2024) to focus on the topic of the shift from defined benefit to defined contribution schemes taking place in some member states. The reason for conducting this project is that the shift from DB to DC has been highlighted both by the EC and EIOPA in the past years. In particular, EIOPA has been working on a DC blueprint to identify principles and practices that promote the design of sustainable occupational DC. While this project is currently on hold, the objective of our work in the SC is to develop our own approach to align and complement the work of EIOPA.

Our work in the SC consisted of a series of presentations on country and company-level experiences concerning the transition to DC. We are also preparing a report **''Road to DC – understanding the shift''**. This paper starts by defining DB, DC, and hybrid models. It gives an overview of the occupational pension landscape in Europe, and analyses the drivers and consequences of the shift from DB to DC and other hybrid schemes. It concludes with some principles on how to provide adequate and complete DC pension arrangements.

This paper will be published and presented at our Annual Conference 2024 on **25 April 2024**.

10. EIOPA's public consultation on its draft Opinion on sustainability claims and greenwashing in the insurance and pensions sector

On 12 December 2023, EIOPA launched a public consultation on its draft Opinion on sustainability. claims and greenwashing in the insurance and pensions sector.

The draft Opinion aims to establish a more efficient system for overseeing sustainability claims throughout Europe. This effort aims to reduce the possibility of greenwashing in the insurance and occupational pensions industries.

To do so, the draft Opinion sets out four principles that should be monitored when providers make sustainability claims:

- Principle 1: Sustainability claims made by a provider should be accurate, precise, and consistent with the provider's overall profile and business model, or the profile of its product(s).
- Principle 2: Sustainability claims should be kept up to date, and any changes should be disclosed in a timely manner and with a clear rationale.
- Principle 3: Sustainability claims should be substantiated with clear reasoning and facts.
- Principle 4: Sustainability claims and their substantiation should be accessible by the targeted stakeholders.

The deadline for this consultation is 12 March 2024. We are planning to respond to this consultation. On the date the newsletter was written, we sent our second draft to our members waiting for their feedback.

11. PensionsEurope contribution to Enrico Letta's report high-level report on the future of the single market and other workstreams preparing the next EC's agenda

PensionsEurope sent on 27 February 2024, a contribution to Enrico Letta, former prime minister of Italy and current president of the Jacques Delors Institute as he is drafting a "High-Level Report on the future of the Single Market" to be delivered for the 17-18 April 2024 European Council summit.

Our input addresses the role of our sector in the CMU agenda, our specificities and outlines different possibilities to deepen the single market.

In his report, Letta aims to spotlight sectors where progress in single market integration has halted, and obstacles hindering cross-border commerce, touching also pension issues.

Other workstreams are ongoing to prepare the agenda for the next Commission:

- A Eurogroup statement on the Future of European capital and financial markets: To be published on 11 March 2024 with policy areas for actions regarding the future of CMU, including on pension issues;
- A Mario Draghi's report on EU competitiveness: Expected to be issued in June/July 2024, the report aims to be broader than Letta's report by addressing issues related to the EU's competitive position vis à vis other major economies;
- A European Council strategic agenda: Expected to be adopted in June 2024, European Council president Charles Michel aims to establish high-level objectives for the incoming Commission, taking stock of the EP elections outcomes.

12. PensionsEurope Annual Conference 2024

The PensionsEurope Annual Conference will take place on **25 April 2024** at the AG Campus in Brussels. The conference is organised together with the support of our Belgian member PensioPlus.

The Annual Conference will be followed by the General Assembly Meeting on 26 April 2024 and a social programme on 27 April 2024.

This year's theme is ''Good Future for Funded Pensions''. This year's conference will evaluate the recent regulatory reforms impacting pension funds, especially on sustainability issues, focus on new investment opportunities for growth, and navigate the challenges and priorities awaiting pension funds with the new European Parliament and Commission. We secured high-level speakers from the European Commission, EIOPA, and the European Investment Fund. The programme is available here.

We sent our invitations to all our members. We kindly ask you to register on our website here should you wish to participate.