PENSIONS EUROPE

PensionsEurope Newsletter 2024/05

1. Framework for financial data access (FIDA)

I. Council

On 4 December 2024, the COREPER approved its negotiating mandate. The exclusion of pension rights in either pension schemes under the IORPII directive or insurance companies has been kept (former Article (2)1c), aligning with our September 2024 messages on FIDA that were sent to the Hungarian presidency.

In Article 2 (2)k, IORPs are in the scope of FIDA "*insofar as they manage personal pension products*". In its explanatory remarks of the text circulated on 15 November 2024, the Hungarian presidency argued that "*While occupational pension data is no longer in scope, IORPS are still relevant insofar they hold personal pension products (Pillar 3) products. This is important to maintain the level playing field, so both Solvency II firms and IORPS are captured in scope for these personal pension products.* »

The final text also foresees an opt-in system in Article 2(1a) for pension rights under the IORPII directive or insurance companies, if a Member State wishes. It also clearly specifies in Article 2(3v) that FIDA does not apply '*to existing national pension tracking system*".

Furthermore, in Article 31, the "review clause" has been modified compared to the initial text to task the EC to assess if new categories of data are to be included in the scope of FIDA, including pension schemes in occupational pension schemes (a). The EC must deliver such a report 5 years after the entry into force of the regulation.

II. European Parliament

On 4 December 2024, the ECON committee voted on the decision to enter into interinstitutional negotiations with 48 votes in favor, 5 against, and 1 abstention to confirm the ECON's final report that was voted on 30 April 2024. To recall, this EP report changed the EC proposal by excluding IORPs and pension schemes that are not accessible to all interested consumers. This is consistent with our April 2024 statement on FIDA.

III. Next steps:

The next EP plenary session (week of 16 December 2024) will endorse the EP position on FIDA. The trilogues will start under the Polish presidency, most likely at the end of January or early February 2025.

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

I. First batch policy products

On 2 December 2024, the remaining piece of the first batch of DORA policy products, the ITS on the register of information was adopted by the EC. There will be the flexibility of having either LEI or EUID as a possibility for financial entities to identify their ICT service providers. However, such providers based in third countries will be identified by LEI only.

II. Second batch of policy products

On 23 October 2024, the EC adopted:

- A RTS on major incident reporting;
- An ITS on-incident reporting (with annexes)

The RTS is still under a three-month scrutiny period while the ITS will be published at the OJEU by the end of the year.

As regards the RTS on subcontracting the EC is willing to bring major changes compared to the text that was submitted by the ESAs, by focusing on the materiality and the criticality of the ICT services provided by ICT subcontractors. Therefore, the EC is expected to adopt a final RTS on subcontracting in the first quarter of 2025.

III. FAQ/Q&A on DORA

Such an EC document is likely to be published by the end of the year. As it is not fully in the hands of DG FISMA with the legal services involved, it has been delayed. It should clarify the DORA's definition of ICT services.

IV. ESAs decision on collecting information for CTPP designation

On 15 November 2024, the ESAs published a decision on the information that NCAs must report to them for the designation of CTPP under DORA. ESAs will start overseeing CTPPs offering ICT services to financial entities in the EU. The decision requires NCAs to report to ESAs by 30 April 2025.

V. ESAs statement on DORA application

On 4 December 2024, the ESAs published a statement on DORA application, calling financial entities and ICT providers to "*advance their preparations to ensure their readiness*" to ensure compliance "*in a timely manner*" as DORA does not provide for a phase-in period and the application date (17/01/2025) is looming.

The statement also reiterates the timeline already indicated in November 2024, with financial entities that need to fill out their register of information in early 2025 as the NCAs must submit the related information to the ESAs by 30 April 2025.

Finally, it emphasizes that NCAs will enforce DORA requirements '*considering the risk profile, size, scale, and complexity of the activities of the various financial entities*' and '*the EBA's, ESMA's and EIOPA's UnionStrategic Supervisory Priorities (USSPs)*'.

VI. PensionsEurope advocacy

On 14 October 2024, PensionsEurope sent a letter to the EC asking for legal clarity on DORA's definition of ICT services. We requested the EC to provide legal certainty around the definition of "ICT services," as we understand that the EC is working on a FAQ. We appealed for clarification that 'regulated financial services' do not fall within this definition.

On 27 November 2024, PensionsEurope sent a joint PE/AEIP letter to the ESAs, to request the ESAs to issue a no-action letter to national competent authorities (NCAs) to address challenges coming from DORA enforcement, ahead of the application date of 17 January 2025.

On 10 December 2024, Petra Hielkema, EIOPA Chairperson, answered our request for DORA no-actions letters. While acknowledging the challenges of implementing DORA given the "*pending adoption of some delegated and implementing acts*", the letter highlights the following calendar:

- *« The ITS on the register of information has been adopted on 29 November 2024 and published in the Official Journal on 2 December 2024»*
- *« The RTS on reporting major ICT-related incidents was adopted on 24 October 2024 and will be published in the Official Journal on 24 January 2025»*
- *« The RTS on subcontracting, available in the draft form submitted by the ESAs to the European Commission since July 2024, is still pending adoption»*
- *« The interpretation of ICT services is expected to be published by the ESAs once received the reply from the European Commission before the end of this year»*

With that calendar, the chairperson indicates that "*ESAs believe that no-action letters are not a viable or necessary solution* » and highlights that "*the ESAs are actively supporting the industry to address implementation challenges*" and also refers to the December 2024 DORA statement that sticks the timeline already indicated in November 2024.

3. Start of the new European Commission

I. Confirmation of the von der Leyen Commission II

On 27 November 2024, the European Parliament approved the second Ursula von der Leyen Commission, by 370 votes for, 282 against, and 36 abstentions – the threshold to be elected is 361 with EP seats at 720.

Then, on 28 November 2024, the European Council appointed by written procedure the European Commission for the period from 1 December 2024 to 31 October 2029.

In her speech to the European Parliament, Ursula von der Leyen announced that the "first major initiative" of the new EC will be the launch of a "Competitiveness Compass" based on the three pillars of the Draghi report: (1) closing the innovation gap, (2) a joint plan for decarbonization and competitiveness and (3) reinforcing our economic security. She also highlighted that the EC is going to present **new omnibus legislation** as one of the first steps in the mandate. To recall, during a press conference in October in Budapest, she expressed that some existing and future EU ESG reporting obligations will be consolidated into one "omnibus" regulation. In particular, von der Leyen stated that the "often overlapping" reporting requirements included in the Corporate Sustainability Reporting Directive (CSRD), EU Taxonomy Regulation, and Corporate Sustainability Due Diligence Directive (CSDDD) need to be combined to "reduce bureaucracy".

II. Publication of the EC's provisional agenda (11 December – 5 March 2025)

On 4 December, the College of Commissioners adopted its first provisional agenda from 11 December until 5 March 2025. The tentative timeline for the discussion of **the 2025 Commission Work Programme** is 11 February 2025 in the Strasbourg plenary session and is the responsibility of EC's president Ursula von der Leyen. The **Competitiveness Compass and the Annual Single Market and Competitiveness Report** will be published on 15 January under the responsibility of the EC's president and Stéphane Séjourné, Vice-President for Prosperity and Industrial Strategy. **The omnibus simplification package** will be led by Stéphane Séjourné and scheduled for 26 February 2025.

4. OECD Pensions Outlook 2024 and Pension Markets in Focus

On 2 December 2024, the OECD launched at a public event the ***OECD Pensions Outlook 2024*** and the ***Pension Markets in Focus 2024***.

I. OECD Pensions Outlook 2024

The ***OECD Pensions Outlook 2024*** looks at how to improve retirement outcomes by providing insights and recommendations for improving the design of funded pensions.

Chapter 1 summarizes the main recommendations and findings. In addition, in this edition, the main themes and takeaways are:

- **Multi-employer arrangements for improving access to pension plans**: Pension systems should cover all workers, including workers outside of collective agreements and the self-employed.

Multi-employer plans combined with those set up by financial institutions will provide broader access and complement each other's gaps.

- **The design of financial incentives for retirement savings across OECD countries:** Tax incentives for retirement savings have grown in OECD countries but mainly benefit mid and higher earners. Non-tax incentives like matching contributions are increasingly important for lower-income groups. Many countries fail to update income thresholds and contribution limits for tax relief, which may reduce the attractiveness of financial incentives.

- **Equity investments and retirement outcomes in DC pension plans**: Equity investments in DC pensions lead to better retirement outcomes but increase volatility. The OECD recommends life-cycle strategies and to avoid conservative default strategies.

- **The design of the payout phase:** It should consider the role of DC pensions in the broader pension system. The payout strategies also need to address people's financial needs, allow for some flexibility for discretionary spending, provide clear default options, and use behavioral nudges and education to help people choose the right payout option when applicable.

- **Home equity release products for the elderly:** It enables retirees to supplement their financial resources. Policymakers must ensure that regulatory frameworks guarantee product suitability, protect homeowners from risks, and allow providers to manage their own risk exposures in an appropriate manner.

- **Pension dashboards (i.e., tracking systems):** They should facilitate individuals' access to information about their pensions and their expected future retirement income. Dashboards should present information in a way that is easily understandable and effective in engaging users. Their implementation is a long-term process that requires improvement over time.

II. The Pension Markets in Focus 2024

The ***Pension Markets in Focus 2024*** provides statistics on funded pensions around the world. The main topics and key takeaways are:

- **Growth of assets earmarked for retirement in 2023**: They grew by 10% in nominal terms in the OECD countries. This growth is derived from the investment income that pension providers and public pension reserve funds received from the developments in equity markets.

- **Assets were not back to their 2021 level at end-2023**: In 2023, they were still 5% below their 2021 level in nominal terms in the OECD area. This is due to large investment losses in 2022 given the rise of interest rates and falling equity valuations. Large pension markets (the US and some European countries) have not been able to recoup their investment losses from 2021, driving this trend. However, smaller pension markets were able to do so and benefited from the excess of contributions over benefit payments.

- **2023 marks a return to the long-term trend of growing assets earmarked for retirement**: This growth is consistent with the long-term trend in retirement asset growth despite some temporary declines. Assets have tripled over the last two decades thanks to positive investment income and government measures to increase participation and contribution in pension plans.

- **The long-term shift away from defined benefit** continued although the solvency of DB plans improved in 2023, with asset growth outpacing liabilities. Strong equity market performance offset declining discount rates toward the end of the year, boosting funding ratios. However, some employers may have used the improvement in funding levels to terminate DB plans and shift risks and liabilities, further accelerating the move toward DC plans.

5. ESMA consultation on the Conditions of the Active Account Requirement under EMIR 3

Background:

On 4 December 2024, the clearing package has been published at the OJEU :

- Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets.
- Directive (EU) 2024/2994 of the European Parliament and of the Council of 27 November 2024 amending Directives 2009/65/EC, 2013/36/EU and (EU) 2019/2034 as regards the treatment of concentration risk arising from exposures towards central counterparties and of counterparty risk in centrally cleared derivative transactions.

Against that background, the ESMA launched on 20 November 2024, its consultation on the Conditions of the Active Account Requirement (AAR) under EMIR 3. The Review of the EMIR 3 seeks to address the financial stability risks caused by EU clearing members and clients being exposed to systemically important third-country central counterparties (Tier 2 CCPs), by requiring certain financial counterparties (FCs) and non-financial counterparties (NFCs) with exposures to clearing services of substantial systemic importance to hold an operational and representative active account at EU CCPs.

ESMA is mandated under Article 7a(8) to further specify the conditions of the Active Account Requirement (AAR) in a Regulatory Technical Standard (RTS) within six months following the entry into force of the amending Regulation.

Content:

- Section 3 outlines the scope of the AAR on which ESMA has based its quantitative analysis and the different policy choices outlined in this Consultation Paper.

- Section 4 outlines the requirements proposed by ESMA to meet the operational conditions set out under points (a) to (c) of Article 7a(3), and their stress-testing.

- Section 5 specifies the details of the representativeness obligation under condition (d) of Article 7a(3), including the relevant classes of derivatives, the different trade size and maturity ranges, the number of most relevant subcategories per class of derivatives, as well as the duration of reference periods.

- Section 6 details the reporting requirements for counterparties subject to the AAR under Article 7b.

Next steps

The deadline for the consultation is 27 January 2025. Our internal deadline is Thursday 19th December 2024 COB.

ESMA will consider the feedback it received from this consultation in Q1 2025 and expects to publish a final report and submission of the draft technical standards to the European Commission for endorsement as soon as possible.

6. 2025 IORP stress test exercise

The last IORP stress test took place in 2022. It was a climate stress test with a focus on transition risks and it used the Common Balance Sheet (CBS) methodology for the first time for DC schemes.

EIOPA BOS adopted by consensus during its 26-27 June 2024 meeting, the proposal for "*the launch of the 2025 Institutions for Occupational Retirement Provision (IORP) stress test exercise*" with a "*proposed exercise*" aiming "at testing the liquidity position of IORPs against a scenario characterised by the prolongation/exacerbation of geopolitical tensions.

The exercise will focus on the impact of derivatives, in an asset-only exercise, without a capital component (i.e. no funding ratio tested). The reference date for this exercise will be the end of 2024.

The indicative timeline of the exercise is the following:

- September/October 2024 to March 2025: Design phase by EIOPA and NCAs.
- February 2025: informal consultation on technical specifications/documentation (AAE (European actuaries), AEIP, and PensionsEurope).
- April to July/August 2025: Calculation phase by participating in IORPs submission to NCAs (with resubmissions on request by NCAs in July/August 2025).
- July/August 2025 to September 2025: Local validation by NCAs.
- September/October 2025: Central validation by EIOPA.
- November/December 2025: Analyzing and drafting by EIOPA.

Thus, the exercise will start in April 2025 and the EIOPA final report will be published in December 2025.

PensionsEurope advocacy

On 31 October 2024, we (PE, AEIP & the chair of the ST WG) met with EIOPA to discuss the upcoming stress testing exercise. We will meet them again in January 2025.

7. Annual Conference 2025

We will organise 10 April 2025 together with our Romanian member, APAPR, our Annual Conference 2025 in Bucharest. The programme will be available soon. Registration is already open and available here.