



***Input by KPS on
Call for advice by EIOPA
For the review of IORP II***

KPS study group 'International pensions'

October 11, 2011



More about the KPS

The Circle of Pension Specialists (KPS) has over 430 participants. These participants have senior positions in the pension world in various disciplines. Participants take part in their personal capacity, not as a representative of the legal entity they work for. In their daily work, they have a decisive influence in developing and implementing second pillar pension schemes and all structures around. From their broad and deep knowledge and vision they actively provide the public debate on pensions with their input. The KPS is regularly approached by politicians, regulators, ministries and other organizations on current pension issues. The input of KPS is not politically "coloured", but is focused purely on know how and technical aspects of second pillar pensions. More information about the KPS, please visit our website: www.kps.nl.

Introduction

The Circle of Pension Specialists (KPS) considers the future sustainability of the pension system in the Netherlands and in Europe of great importance. Therefore, KPS started a Study group 'International Pensions', which in recent months dealt with input on the 'Call for advice from the European Insurance and Occupational Pensions Authority (EIOPA) for the review of Directive 2003/41/EC (IORP II)'. The Study group consists of a mixed group of experts who are members of KPS. They work on senior level as consultants, managers, lawyers, supervisors and practitioners in the pension sector. The plenary Study group 'International Pensions' consists of approximately 40 members of the KPS. The members of the group have exchanged experiences, problems and challenges of the occupational pension schemes - both in Dutch and European context - and formulated proposals for improvement. This memorandum is KPS' input in the Call for advice, including observations and suggestion.

Accounting for this paper

This memorandum is the result of discussions that took place in the Study Group 'International pensions' and is based on the broad experience of the members of the group.

The conclusions and recommendations are supported by the members of the group.

The Board of KPS has taken note of this memorandum, agrees with the approach of the group and recognizes the importance of the sustainability of pension systems in Europe in line with the recommendations made by the working group.

Participants of the working group who contributed to this memorandum are:

- Eric Bergamin
- Richard Boonstra
- Jos Gielink
- Roland de Greef
- Gerard Heeres
- Ingrid Leene (leading group)
- Hans van der Meer
- Adrian Putters (leading group)
- Erik Schouten
- Henk Jan Strang (moderator)
- Mariëtte Vis
- Ap Fraterman
- Gerard van het Hoff (moderator)
- Ruud Junge
- Frans van Liempt (leading group)
- Gerrit Nolles
- Piet Hein Oyens
- Joop Rietmulder
- Wijnanda Rutten

General remark relating to revision of IORP Directive

In our view, the draft Response should establish a uniform framework – rather than only a minimum – for the provision of pensions throughout the EC. A uniform framework for all pension provisions is essential for the establishment of cross-border pensions on an efficient and transparent basis, rather than the undue complexity resulting from the collection of different requirements set country. A uniform structure should also result in a revision of existing legislation and regulations at the national level, to ensure uniformity. In what follows, we comment on the various sections set out in the Draft response to Call for Advice on the review of Directive 2003/41/EC:

1. Scope

The proposed IORP Directive should be consistent with the objectives of the European Community towards freedom of movement of people, capital and services. This includes the establishment of a level playing field for the provision of pensions. Both the existing IORP Directive and the proposed changes to it, by excluding a number of vehicles for the provision of pensions, run counter to the EC objectives set out above.

In the short term, and taking account of the limitations of the existing IORP Directive as set out in paragraph 6.2.6., we recommend that inter alia pensions provided on a book reserve and DC basis be covered under the IORP Directive. We therefore agree with the proposed text set out for Option 5. However, we recommend that the concept “own risk” and the full implications thereof will need to be further clarified.

Excluding the other vehicles as set out in paragraph 6.2.6 would imply that the risks, required provisions, governance, communication and other elements of pensions provided through those vehicles are not addressed. The risks, notably those relating to demographic trends, fiscal developments and sponsor solvency attaching to each of those vehicles should also follow through from the IORP Directive to facilitate a level playing field as far as possible. We recommend that the long term objective of the IORP Directive should be an all-encompassing approach for all pension vehicles.

2. Cross-border activities

We support option 2 as set out in the consultation document in view of the enhanced clarity it is expected to provide. In addition, we recommend that the IORP Directive should seek to enhance clarity and uniformity by setting out precisely the definition of the concepts set out, e.g. “cross-border activities”, “nationality of scheme” and “social and labour law”.

Moreover, we recommend that a EC body – possibly EIOPA – be charged with providing further clarification of the IORP Directive to member states as and when the Directive is found not to provide adequate clarity or where disputes arise between member states.

We also suggest that EIOPA provide guidance with best practice guidelines.

4. Prudential regulation and social and labour law

In our comments regarding the Scope of the IORP Directive and Cross-border activities, we have set out our recommendation for uniformity in legislation and regulation relating to pensions. This should be further extended to the nature and extent of supervision.

To the extent that this uniformity is not attainable, we support the less optimal route contained in option 2 of CFA 4 of the draft Response. The route set out in option 2 should enhance the transparency and efficiency of providing pensions through cross-border IOPR's, although the level playing field for providing pensions in general will then not be attainable.

10. General Governance Requirements and remaining aspects

We agree that a framework consistent with that in terms of Solvency II could be considered for IORP's. However, in view of the inherent differences relative to insurance undertakings, a uniform application appears inappropriate. Rather the general principles in parts 2 and 3 of Solvency II should be further examined for their applicability to IORP's.