

## ETUC POSITION PAPER ON THE REVISED DIRECTIVE ON INSTITUTIONS FOR OCCUPATIONAL RETIREMENT PROVISION (IORP 2)

Adopted at the Executive Committee Meeting of December 2014

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### General comments

The ETUC welcomes much of the approach and the aims of the proposed amendments to the IORP directive. Transparency, better governance and in the end safer pensions is positive.

The ETUC and its affiliated organisations represent the interest of workers, which includes their occupational pension entitlements. Therefore, the ETUC is in favour of a regulatory framework, which can safeguard future pension promises, and secure the best possible management of workers' pensions assets. There is need for a balance between risk and return on one hand and on costs on the other, overall for the aim of achieving strong outcomes of the occupational pension schemes. The rules must serve the aim to secure decent incomes in retirement.

However, the proposal takes as a starting point that is not self-evident. In the recitals of the IORP2 proposal, it says that action is needed to further develop private retirement savings since social security systems are coming under increasing pressure, and that citizens will increasingly rely on occupational pensions as a complement in the future. This is stated as a fact. From the ETUC point of view increasing pressure on social security systems is not a result of a natural law, but stems from political decisions about cuts in public spending, about increased exemptions to employer's obligations to finance the social security systems through social contributions, about taxation and not adapting the public schemes to people's needs. The ETUC reiterates its message that the first pillar pensions should be reinforced so that they can provide adequate retirement incomes and allow older people to enjoy a decent standard of living and economic independence. In addition, occupational pension schemes, based on collective agreements, should be promoted in comparison with other types of additional pensions savings, in order to complement public pay-as-you-go pension schemes.

In addition, the ETUC is concerned about the focus on creating an internal market for IORPs and their services. This should not be a goal in itself.

The recitals of the proposal describe a genuine internal market for occupational retirement provision as crucial for economic growth, job creation and for tackling the challenge of an ageing European society. The ETUC holds that these statements are exaggerated. Nothing in the proposed text leads to this conclusion.

The ETUC holds that the aim of any pension reform should be improved incomes for workers in retirement.

We remain concerned about the lack of a serious attempt to quantify the potential benefits of IORP 2. It is not acceptable to introduce such a far-reaching set of new requirements without evidence-based policy-making, particularly in view of the potential costs to pension schemes, and ultimately pension scheme members.

IORPs do not normally sell their services in an open market. The establishment of occupational pension schemes is often a result of discussions between trade unions and employers, as part of the pay workers get for their work. Thus, IORPs exist and work in a context of social and labour law, and are not only framed by financial regulation.

## Specific comments

*Prudential regulation*, aiming at securing future pensions and the functioning of the financial market as a whole, is normally justified and something the ETUC can support, aiming at an adequate replacement rate, providing protection against inflation. However, the specific regulation for IORPs must be reasonable, in order to serve its aims.

*Investment options*: the proposal allows for IORPs to invest in assets, which are not traded on regulated markets, with reference to investment risks diversification, and achievement of target returns in line with long-term investment aims. The ETUC reminds decision makers of the need of caution in this respect, because of the risk affecting the scheme members by such investments.

*Pension benefit statement*: information to scheme members and beneficiaries is important. Standardisation of the required information can be positive and contribute to comparability between different pensions schemes and pensions providers. Information must be understandable for the general recipient. Descriptions of accrued pension rights must be delivered in a user friendly manner. The ETUC suggests leaving out forecasts from mandatory information provided in a pension benefit statement. Vague predictions about future earnings are not helpful when it comes to occupational pensions. First pillar pensions could be seen differently. People often remain covered by the same national pension scheme over their working life, but occupational pension schemes are more often linked to a specific employer. Only half of the European workers are covered by an occupational pension scheme. Therefore, it does not come naturally to expect that somebody who changes jobs, remains covered by the same occupational pension scheme, and not even any occupational pension scheme at all. A statement of accrued rights up until now is fine, but predictions based on future earnings might even be misleading.

In addition, the ETUC reiterates that information needs to be provided not only in an electronic way, but on paper. Information via electronic media can be helpful, but only in addition to printed letters and benefit statements.

*Governance*: the ETUC advocates that people who are entrusted with responsibility to manage other people's future pensions should be reliable. Still, the educational and professional requirements must not lead to the exclusion of representatives of the social partners in the management structure. Fit and proper requirements (article 23) should be applied to the management board as a whole, on a collective basis to governing boards and not to individual members. It is important that there is appropriate and enough competence to safeguard efficient management of pension assets, but rules must not be introduced to exclude lay trustees or other social partner representatives. Second pillar pension arrangements are normally also social contracts, which leads to the conclusion that the same rules as for mere financial institutions are not appropriate. Social partners are key in the setting-up and governance of these. Lay trustees, where this arrangement exists, and trade union representatives in other governing bodies of pension funds, have a major and crucial role in the running of pension schemes. By law trustees must act in the best interests of beneficiaries, i.e. scheme members. Lay trustees and other trade union representatives are essential to maintaining member trust in pension schemes and member interaction with pension schemes.

In relation to risk management (articles 25 and 26), we believe that IORPs should ensure that there are appropriate procedures for their employees to report potential or actual breaches internally. This should include those on a short-term or temporary contract, as well as persons outside the traditional employee relationship (such as consultants and interns). In some countries, there are already well-established procedures where elected trade union representatives can function as a middleman in internal reporting. If such procedures exist on national level, they should be allowed to continue. The confidentiality

of the employees who report potential or actual breaches should be protected throughout the process.

In relation to remuneration practices (preamble 37 and article 24), we would like to point out that provisions on remuneration should be without prejudice to the rights, where applicable, of the social partners to conclude and enforce collective agreements, in accordance with national law and customs. The social partners can, and must be allowed to, assume the responsibility of sound and sustainable remuneration principles. It is crucial to have remuneration policies and practices in place that are consistent with and promote sound and effective risk management and corporate governance. Remuneration in general is an issue that should be left to the social partners to decide upon, since pay is, according to art. 153.5 in the Treaty on the Functioning of the European Union (TFEU), not for the EU to deal with.

Cross-border delivery of IORP services is not necessary. Of course, cross-border activity of an IORP should be allowed if employers and trade unions find this way of organising a pension scheme relevant. The majority of employers are small and do not operate cross-border with employees in different countries. Employment contracts, to which occupational pension scheme membership can be a part, are framed by a national context. The overwhelming majority of workers remain in their country of origin. Tax is still national and the link to the work contract is strong. Therefore, the ETUC does not see the need for attempts to promote delivery of cross-border IORP services.

### **Concluding remark**

Occupational pensions and IORPs exist in a context of social and labour law. There is a close link to work contracts and they are often based on collective agreements. They relate to and complement national social security and pension scheme, so therefore they cannot be seen in isolation from these. In addition, taxation has strong impact on the existence and the outcome of occupational pension schemes. Many policy areas are interlinked with occupational pensions. Decisions regarding these are often national and therefore not easily coordinated at a European level.

Furthermore the ETUC points to the need to implement a coordination between member states on taxation issues also in order to avoid that member states experience the loss of some of their financial resources which are needed to face the challenge of an ageing European society. The ETUC and its member organisations will remain actively involved in the continued debate about the IORP 2 proposal and other issues regarding occupational pensions in Europe. The comments above are the result of ETUC discussions so far, and they will be further developed, as the debate continues.