IORP Directive Mk II

analysis from the NAPF

updated on 28th July 2015

This document identifies the key reforms proposed in the new IORP Directive published by the European Commission in March 2014. It also tracks the most notable developments as the proposal moves through the EU's co-decision legislative process.

This update takes account of the latest development – the draft report from ECON Committee's *rapporteur*, Brian Hayes MEP, published on 27 July 2015. It also comments on the texts published by the Italian Council Presidency following discussions in the Council Working Group during Autumn 2014, leading to the Council's final 'Presidency Compromise' on 28 November 2014.

The next steps are in the European Parliament and are expected to be as follows:

- Consideration of draft report: 14-15 September 2015
- Deadline for Amendments: 1 October 2015, 12h00
- Consideration of amendments: 9-10 November 2015
- ECON Vote: 30 November/1 December 2015
- Early 2016 (under NL Presidency): Expected trilogue negotiations

Readers who wish to see the source documents can find them as follows:

European Commission documents

- Current (2003) IORP Directive

- EC proposal for IORP Directive Mk II (March 2014)

European Parliament documents

- draft report for ECON by Brian Hayes MEP (28 July 2015)

Council of Ministers documents

- COREPER position (10 December 2014)

- Council negotiating mandate (28 November 2014)

- Fourth compromise text issued by the Italian Presidency of Council of Ministers (28 November 2014)

- Third compromise text issued by Italian Presidency of Council of Ministers (7 November 2014)

- Second compromise text issued by Italian Presidency of Council of Ministers (23 October 2014)

- First compromise text issued by the Italian Presidency of the Council of Ministers (17 September 2014)

Current IORP Directive text (2003) (<u>underlined</u> = text to be excised)	**EC proposal for IORP Directive Mk II (March 2014)** (**bold** =new text)	**NAPF comment on EC proposal**	**Key points from:** - **Council of Ministers** amended texts, up to and including fourth Presidency Compromise (Nov 2014) - **Brian Hayes MEP's** draft report for European Parliament (July 2015)
Recital 2c (new) – no 'one-size-fits-all'			Hayes adds a new Recital noting the variety of occupational pension provision across Member States and saying 'one-size-fits-all' solutions are not appropriate (Amt.4).
Recital 20 – social purpose of IORPs			Hayes adds a helpful statement that IORPs '**should not be treated as purely financial service providers as they serve an important social function due to the central role played by social partners in the running of the institution**'(Amt.16).
Recital 60a (new) – Solvency models			Hayes adds an important new Recital: '**The further development of solvency models, such as the Holistic Balance Sheet (HBS), is not realistic in practical**

			terms and not effective in terms of costs and benefits….No quantitative capital requirements – such as Solvency II or Holistic Balance Sheet models derived therefrom – should therefore be developed at the Union level with regard to institutions for occupational retirement provision….' (Amt.41).
Article 5 – small schemes Member States may choose not to apply this Directive, in whole or in part, to any institution located in their territories which operates pension schemes which together have less than 100 members in total.	**Article 5 - small schemes** [No change]	No change – schemes with fewer than 100 members still excluded from IORP Directive.	
Art. 5 – statutory schemes Member States may choose <u>not</u> to apply Articles 9 to 17 to institutions where occupational retirement provision is made under statute, pursuant to legislation, and is guaranteed by a public authority.	**Art. 5 – statutory schemes** Member States may choose to apply Articles 1 to 8, Article 12, Article 20 and Articles 34 to 37 to institutions where occupational retirement provision is made under statute, pursuant to legislation, and is guaranteed by a public authority.	Decision-making is reversed in Mk II. Statutory schemes are now automatically excluded unless Member State decides otherwise.	
Art. 6.c – definition of 'sponsoring undertaking' 'sponsoring undertaking' means any undertaking or other body, regardless of whether it includes or consists of one or more legal or natural persons, which <u>acts as an employer or in a self-employed capacity or any combination</u>	**Art. 6.c – definition of 'sponsoring undertaking'** c)'sponsoring undertaking' means any undertaking or other body, regardless of whether it includes or consists of one or more legal or natural persons, **which under national legislation is legally obliged or voluntarily commits to**	No major problem with this new definition.	

thereof and which pays contributions into an institution for occupational retirement provision;	**offering a pension scheme;**		
Art 6.i– definition of 'home Member State' 'home Member State' means the Member State in which the institution has its registered office and its main administration or, if it does not have a registered office, its main administration;	**Art 6 i – definition of 'home Member State'** 'home Member State' means the Member State **in which the institution has been authorised or registered and in which its main administration is located. The place of main administration refers to a place where the main strategic decisions of the institution's decision making body are made**;	Clarification of 'main administration not clear. What about an IORP that is registered in one Member State but has its main administration centre in another? 'and' should be deleted.	
Art. 6 j – definition of 'host Member State 'host Member State' means the Member State whose social and labour law relevant to the field of occupational pension schemes is applicable to the relationship between the sponsoring undertaking and members.	**Art. 6 j – definition of 'host Member State** 'host Member State' means the Member State whose social and labour law relevant to the field of occupational pension schemes is applicable to the relationship between the sponsoring undertaking and members **or beneficiaries.**	A key concern – this could turn any scheme with beneficiaries in another Member State (ie very many schemes) into a cross-border scheme – with a potential requirement for full funding at all times.	Hayes helpfully removes the reference to 'beneficiaries' (Amt.49).
Art. 6 – further definitions No text in current Directive	**Art. 6 – further definitions** **(k) 'transferring institution' means an institution transferring all or a part of a pension scheme to an institution in another Member State;** **(l) 'receiving institution' means an institution receiving all or a part of a pension scheme from an institution in**	Completely new text. Definitions seem sensible.	

	another Member State; **(m) 'regulated market' means a multilateral system in the Union within the meaning of Article 2(1)(5) of Regulation (EU) No …/… [MiFIR];** **(n) 'multilateral trading facility' means a multilateral system in the Union within the meaning of Article 2(1)(6) of Regulation (EU) No …/… [MiFIR];** **(o) 'organised trading facility' means a system or facility in the Union referred to in Article 2(1)(7) of Regulation (EU) No …/… [MiFIR];** **(p) 'durable medium' means an instrument which enables a member or a beneficiary to store information addressed personally to that member or beneficiary in a way that is accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;** **(q) 'key function', within a system of governance, means an internal capacity to undertake practical tasks; a system of governance includes the risk management function, the internal audit function, and where the institution enters into financial commitments or establishes technical**		

	provisions, also the actuarial function.		
Art. 9b – Persons running the IORP the institution is effectively run by persons of good repute who must themselves have appropriate professional qualifications and experience or employ advisers with appropriate professional qualifications and experience;	**Art. 9b – Persons running the IORP** Deleted – See Art.23	This short article is replaced by a new, extensive series of governance requirements at Article 23 – see below. The 2003 text requires members of the governing body OR their advisers to have professional qualifications. The new text removes the reference to professional qualifications for advisers and places the requirement on the governing body. Potentially very dangerous and risks treading on the toes of member-nominated trustees, who are often best placed to act as quality trustees. Having knowledge standards across the trustee board as a whole seems much more appropriate.	Hayes helpfully removes the reference to 'professional qualifications' and proposes that the trustee board's knowledge and experience be assessed '**collectively**' – not individually (Amt.108).
Art. 9.1.d – approval of technical provisions all technical provisions are computed and certified by an actuary or, if not by an actuary, by another specialist in this field, including an auditor, according to	**Art. 10 – Pension scheme rules** Deleted	The simple, high-level requirement for approval of TP by an auditor or specialist, as approved by the national regulator, is replaced by much more detailed requirements – below.	

national legislation, on the basis of actuarial methods recognised by the competent authorities of the home Member State;			
Art. 9.1.f – Conditions of operation (f) the members are sufficiently informed of the conditions of the pension scheme, in particular concerning: (i) the rights and obligations of the parties involved in the pension scheme; (ii) the financial, technical and other risks associated with the pension scheme; (iii) the nature and distribution of those risks.	**Art. 11 – regular financing** .	The simple, high-level requirements on info for members are replaced by the very detailed requirements for the new Pension Benefit Statement (Arts. 40-54).	
Art. 9.3-4 – conditions of operation 3. A Member State may make the conditions of operation of an institution located in its territory subject to other requirements, with a view to ensuring that the interests of members and beneficiaries are adequately protected. 4. A Member State may permit or require institutions located in its territory to entrust management of these institutions, in whole or in part, to other entities operating on behalf of	Deleted	No impact	

those institutions.			
Art. 20 – Cross-border activities	**Art. 12.4 – cross border activities** **The decision referred to in the first subparagraph shall be reasoned.** **Where the competent authority of the home Member State refuses to communicate the information referred in the first subparagraph to the competent authorities of the host Member State, it shall give the reasons for its refusal to the institution concerned within three months of receiving all the information referred to in paragraph 3. That refusal or a failure to act shall be subject to a right to apply to the courts in the home Member State.**	This new clause helpfully strengthens provisions against a host Member State obstructing the activities of a cross-border scheme.	Council Compromises II, III and IV set out a series of amendments, which appear mostly to be clarifications with no significant UK issues yet identified.
None	**Art. 13 – Cross-border transfers of pension schemes** **1. Member States shall allow institutions authorised or registered in their territories to transfer all or a part of their pension schemes to receiving institutions authorised or registered in other Member States.** *plus 7 further detailed clauses*	This new article sets out a regulatory framework for transfers of pension schemes across borders. It has potential to be relevant if Scotland were to vote for independence. It appears to refer to transfers of a 'book' of insurance business from one Member State to another.	This draft Article is extensively revised by the Council, apparently to make the processes required around a cross-border transfer clearer than in the EC's draft.
Art. 15.6 –Technical provisions - reports on cross-border	**Art 14 – Technical provisions** Deleted	This appears to remove the requirement for EIOPA to issue regular reports on the	

With a view to further harmonisation of the rules regarding the calculation of technical provisions which may be justified – in particular the interest rates and other assumptions influencing the level of technical provisions – the Commission, drawing on advice from EIOPA, shall, every 2 years or at the request of a Member State, issue a report on the situation concerning the development in cross-border activities.		numbers of cross-border schemes. The most recent report (July 2013) showed the number of cross-border IORPs had dropped by two to 82.	
Art. 16.3 – Funding of technical provisions – cross-border schemes In the event of cross-border activity as referred to in Article 20, the technical provisions shall at all times be fully funded in respect of the total range of pension schemes operated. If these conditions are not met, the competent authorities of the home Member State shall intervene in accordance with Article 14. To comply with this requirement the home Member State may require ring-fencing of the assets and liabilities.	**Art. 15 – Funding of technical provisions – cross-border schemes** No Change	The requirement for cross-border schemes to be fully funded at all times is retained . This is one of the major surprises in the new Directive – and a key disappointment after clear signals that the EC would act in this area.	The first Presidency compromise made a significant change, removing the requirement for cross-border schemes to be fully funded at all times. However, full funding would still be required at the *start* of cross-border activities. Compromises II and III reversed this helpful change – reinstating full funding at all times. Hayes has emphasised his determination to reform this rule and has picked up the Council's idea of requiring full funding rule only at the moment when a new scheme was established. However, his draft report would apply this to *all* IORPs (not just *cross-border* IORPs). This could cause great difficulty for many non-

			cross-border schemes, which could be caught when setting up a new section or amending the scheme rules (eg to change benefits or increase contributions) – if these types of changes were classed as setting up a 'new' scheme. This will need to be amended.
None	**Arts. 17-19 – Solvency margin** Extensive description of solvency margin requirements for regulatory own funds schemes. See Directive for details.	No impact in UK.	
Art. 18.5.c – Investment rules However, Member States shall not prevent institutions from:….. (c) investing in risk capital markets.	**Art. 20.6.c – Investment rules** ….from:…. **investing in instruments that have a long-term economic profile and are not traded on regulated markets, multilateral trading facilities or organised trading facilities**	Adds a clear statement that Member States may not prevent pension funds from investing in long-term assets. Recital 33 expands the point. We could use this as leverage to address two issues which limit the investment in illiquids and long-term assets. For DB schemes the Occupational Pension Schemes (Investment) Regulations 2005 (as amended) para 4 includes at (3) a requirement (among other things) to have regard to the	

		'liquidity' of the portfolio as a whole, and states "(5) The assets of the scheme must consist predominantly of investments admitted to trading on regulated markets. (6) Investment in assets which are not admitted to trading on such markets must in any event be kept to a prudent level." While the words are quite principles-based, there's a risk of chilling long-term investment. And for DC schemes practice means that they offer daily liquidity, severely limiting the scope for illiquid investments.	
Art. 18.7 – investment rules for cross-border schemes In the event of cross-border activity as referred in Article 20, the competent authorities of each host Member State may require that the rules set out in the second subparagraph apply to the institution in the home Member State. In such case, these rules shall apply only to the part of the assets of the institution that corresponds to the activities carried out in the particular host Member State. Furthermore, they shall only be applied if the same or stricter rules also apply to institutions located in the host Member State.	**Art. 20 – Investment rules** Deleted	Removes the provision allowing host countries to impose tighter investment restrictions on cross-border schemes.	

The rules referred to in the first subparagraph are as follows: (a) the institution shall not invest more than 30 % of these assets in shares, other securities treated as shares and debt securities which are not admitted to trading on a regulated market, or the institution shall invest at least 70 % of these assets in shares, other securities treated as shares, and debt securities which are admitted to trading on a regulated market; (b) the institution shall invest no more than 5 % of these assets in shares and other securities treated as shares, bonds, debt securities and other money and capital-market instruments issued by the same undertaking and no more than 10 % of these assets in shares and other securities treated as shares, bonds, debt securities and other money and capital market instruments issued by undertakings belonging to a single group; (c) the institution shall not invest more than 30 % of these			

assets in assets denominated in currencies other than those in which the liabilities are expressed.			
Art. 20 – Cross-border activities	**Art. 12.4 – cross border activities** **The decision referred to in the first subparagraph shall be reasoned.** **Where the competent authority of the home Member State refuses to communicate the information referred in the first subparagraph to the competent authorities of the host Member State, it shall give the reasons for its refusal to the institution concerned within three months of receiving all the information referred to in paragraph 3. That refusal or a failure to act shall be subject to a right to apply to the courts in the home Member State.**	This new clause helpfully strengthens provisions against a host Member State obstructing the activities of a cross-border scheme.	The EC proposal (Art.12.5) reduces the time permitted for host countries to inform home countries of their social and labour law requirements from two months to one. Hayes proposes a further reduction to two weeks (Amt.73, Amt.90).
None	**Art. 22 – Governance – general provisions** See Directive	Introduces an extensive new series of requirements, set out in subsequent articles.	The Presidency compromise states that Member States 'shall not prevent IORPs from outsourcing any key functions…. to third parties'. Hayes proposes that schemes' policies on risk management, internal audit, actuarial work and outsourcing would now have to be reviewed every three

			years, not every year as in the EC proposal (Amt.106).
Art. 9.b – Conditions of operation the institution is effectively run by persons of good repute who must themselves have appropriate professional qualifications and experience or employ advisers with appropriate professional qualifications and experience;	**Art. 23 – Fit and proper requirements** See Directive. Includes 23.1.a: **1. Member States shall require institutions to ensure that all persons who effectively run the institution or have other key functions fulfil the following requirements when carrying out their tasks:** **(a) their professional qualifications, knowledge and experience are adequate to enable them to ensure a sound and prudent management of the institution and to properly carry out their key functions (requirement to be fit); and** **(b) they are of good repute and integrity (requirement to be proper).**	Removes the option for the scheme's advisers to hold professional qualifications and places the requirement on those running the scheme. Need to ensure this fits UK's system of lay trustees, while still applying upwards pressure to standards of governance. Need to clarify whether 'fit' requirement will be assessed across trustee board as a whole or will apply to each individual trustee.	Council Compromise IV makes extensive – and very helpful – changes to the draft text. The 'Fit' requirement would be assessed 'collectively' (rather than applying to each individual trustee). 'Professional qualifications' is replaced with 'qualifications' – providing far more flexibility. Hayes makes the same (welcome) changes (Amt.108).
None	**Art. 24 – Remuneration policy** **1. Member States shall require institutions to have a sound remuneration policy for those persons**	New requirement for the IORP to have a remuneration policy.	This is extensively amended in the Presidency compromises:

	who effectively run the institution in a manner that is appropriate to their size and internal organisation, as well as to the nature, scope and complexity of their activities. **2. Institutions shall regularly disclose publicly relevant information regarding the remuneration policy unless otherwise provided in the laws, regulations and administrative provisions transposing Directive 95/46/EC of the European Parliament and of the Council.48** **3. The Commission shall be empowered to adopt a delegated act in accordance with Article 77 specifying:** **(a) the required elements of remuneration policies to be applied by institutions on the basis of the following principles:** **– the remuneration policy shall be established, implemented and maintained in line with the institution's activities and risk management strategy, its risk profile, objectives, risk management practices and the long-term interests and performance of the institution as a whole;** **– the remuneration policy shall incorporate proportionate measures**	NB – 24.3 requires application of the remuneration policy to those 'who effectively run the institution'. This appears to include scheme managers. Does this mean their remuneration would be disclosed? Extremely difficult to know what this means without seeing anything on its implementation. The mention of outsourcing suggests it could possibly extend to fund managers as well, but that seems to tread into the territory that the Shareholder Rights Directive is aiming at in terms of fund manager mandates and remuneration. There is no real insight into how detailed this policy is supposed to be; just that it needs to cover conflicts and risk management. That could be done in a few sentences, or if the guidance requires, could cover multiple pages.	- Disclosure of the remuneration policy is now 'at least to members and beneficiaries' (rather than publicly) and 'on request'. - Plans for the detail of implementation to be set out in a Delegated Act from the EC or in Guidelines from EIOPA (both proposed in previous versions) have been dropped from the third compromise - Remuneration policy is to be revised 'at least every three years'. - Performance assessment is to be 'set in a multi-year framework, not exceeding five years'. Hayes appears to extend the remuneration policy's scope, adding persons who '**perform key functions and other categories of staff whose professional activities have a material impact on the risk profile of the institution**' (Amt.115). Hayes removes the provision for the EC

	aimed at avoiding conflicts of interest; **– the remuneration policy shall promote sound and effective risk management and shall not encourage risk-taking that exceeds the risk tolerance limits of the institution;** **– the remuneration policy shall apply to the institution and to the parties performing the institution's key functions or any other activities, including outsourced and subsequently re-outsourced key functions or any other activities;** **– the remuneration policy shall contain provisions that are specific to the tasks and performance of the administrative, management and supervisory body of the institution, persons who effectively run the institution, holders of key functions and other categories of staff whose professional activities have a material impact on the institution's risk profile;** **– the administrative, management or supervisory body of the institution shall establish the general principles of the remuneration policy for those categories of staff whose professional activities have an impact on the institution's risk profile and shall be responsible for the control of its implementation;**		to set out implementation details in a 'Delegated Act' (Amt.116).

	+ **– the administrative, management or supervisory body of the institution shall be responsible for the implementation of the remuneration policy which support sound, prudent and effective management of institutions;** **– there shall be clear, transparent and effective governance with regard to remuneration and its oversight.** **(b) the appropriate frequency, the specific modalities and content of the public disclosure of the remuneration policy.**		
None	**Art. 25 – General provisions (incl. whistle-blowing)** See Directive	New requirements for risk management function and internal audit. 25.2 requires these to be carried out be separate persons. But it is not clear why or what potential conflict of interest this addresses. 25.7 protects whistle-blowers.	25.2 is amended by the Council, allowing risk management to be carried out by the same person as internal audit. 25.3 is amended to allow the IORP and the sponsoring employer both to carry out 'key functions', as long as the Risk Evaluation for Pensions explains how conflicts of interest will be avoided.
None	**Art 26 – Risk management and function** See Directive	Completely new risk management requirement. The whole of Articles 26-33 look like steps beyond existing practice for most	The Council text adds a completely new Article 26a on the Internal Control function.

		schemes. The largest have internal audit and risk people (and generally these are now separate) but the majority simply do not. Their external auditors will carry out an internal audit oversight but the expense of these requirements will be beyond most schemes and much more than the scale of their issues could require.	
None	**Art 27 – Internal audit function** See Directive	Completely new internal audit requirement.	The second Council compromise requires this to be carried out 'in a manner that is appropriate to their size and internal organisation' – a welcome flexibility.
None	**Art 28 – Actuarial function** See Directive	Completely new actuarial function requirement.	
None	**Arts 29-30 – Risk Evaluation for Pensions** See Directive	Introduces requirement for schemes to compile a REP regularly and after a major change in risk profile. Appears closely based on Solvency II's ORSA – minus some features. Recital 39 covers the same points. The REP would include 'the overall funding needs of the institution'. Is there	The second, third and fourth Council compromises make this text much less prescriptive. IORPs will still be obliged to produce a REP, but there is some flexibility on the precise contents. In particular, the second compromise drops the requirement for EIOPA to issue Guidelines on implementation.

		a risk of Solvency II by the back door?	This is now to be determined by national regulators. The Compromise text also moves the REP from an annual basis to 'at least every three years'. Recital 41 no longer refers to including 'climate change, resource use or the environment') in the Risk Evaluation. However, Art 29.2.b now makes explicit reference to 'an assessment of the overall solvency needs of the institution in accordance with national law'. Combined with Recital 57, which requires a review of the Directive within four years after entry into force (so only two years after implementation), and which will draw on advice from EIOPA (albeit on issued identified by the Commission), there is a risk of opening the way for solvency rules in a future IORP Directive Mk III. The Hayes report echoes the Council's approach, making a series of useful simplifications. He renames the REP as 'Own risk assessment' (Amt.144).

			Hayes deletes the reference to the assessment including a section on 'climate change, use of resources and the environment' (Amts.144-155, Art. 29). Hayes also deletes the EC delegated act on the risk assessment (Amt.156).
None	**Art. 33 – Outsourcing** See Directive	Introduces a new requirement on outsourcing. Outsourcing of important functions would be notified to the regulator. The regulator would have power to request info about outsourced functions at any time.	
None	**Arts. 35-7 – Depository** See Directive	New requirement for DC schemes to appoint a depository 'for safe-keeping and oversight duties'. For DB or risk-sharing schemes, Member States will have the option to require a depository.	Importantly, the third and fourth Council Compromises now state there is no depository requirement for schemes that have invested all their assets in products covered by the AIFM Directive or UCITS Directive. This should mean that hardly any DC schemes have to appoint their own depository (probably none at all).

			This is reinforced by the fourth Compromise, which allows national regulators to exempt DC schemes from the requirement where levels of protection equivalent of those in Article 36 (on safekeeping) and 37 (on oversight) are in place. There is a new recital 45a repeating the changes already made to Article 35 on DC depositories. This text makes it doubly clear that Member States may exempt IORPs from the requirement to appoint a depository as long as equivalent protection for members' benefits is provided. The Hayes draft report does not address the substance of the depository point.
None	**Art. 38.2 – Information to members – general principles** **2. The information shall fulfil all the following requirements:** **(a) it shall be regularly updated;** **(b) it shall be written in a clear manner, using clear, succinct and**	New clause setting out very general standards for communications with members.	

	comprehensible language, avoiding the use of jargon and avoiding technical terms where everyday words can be used instead; **(c) it shall not be misleading and consistency shall be ensured in the vocabulary and content;** **(d) it shall be presented in a way that is easy to read, using characters of readable size.** **Colours shall not be used where they may diminish the comprehensibility of the information if the pension benefit statement is printed or photocopied in black and white.**		
None	**Arts. 38-54 – Information to members / Pension Benefit Statement** See Directive. Art 39 – 'Conditions of the pension scheme' Art 40 – 'Frequency and changes' Art 41 – 'Comprehensiveness and language' Art 42 - 'Length' Art 43 – 'Medium' Art 44 – 'Liability' Art 45 – 'Title' Art 46 – 'Personal details' Art 47 – 'Identification of the institution'	All new. These clauses introduce a new requirement for schemes to provide a standardised, EU-harmonised, two-page Pension Benefit Statement. The very detailed requirements include: - At least annual, free - No longer than 2 pages A4 - Titled 'Pension Benefit Statement' - Costs / charges, broken into admin, safekeeping, transactions, other - Contributions over past 12 months by employee and employer - Total capital, also expressed as	The second and third Council Compromises simplify the PBS requirements significantly, making it far less prescriptive. Article 40 now requires the Pension Benefit Statement to 'be written in a concise way' and deletes the reference to 'two pages of A4-sised paper'. For example, the overly detailed requirements in Article 54 (size of characters etc) are deleted.

	Art 48 – 'Guarantees' Art 49 – 'Balance, contributions and costs' Art 50 – 'Pension projections' Art 51 – 'Investment profile' Art 52 – 'Past performance'	annuity per month - Target benefits at retirement age, 2 years before and 2 years after, or capital at retirement age, 2 years before and 2 years after. - Description of each investment option - In DC, risk and return profile showing a synthetic graphical indicator. - Chart of performance up to last 10 years. - and much more…	Article 49 no longer requires the Pension Benefit Statement to include information about contribution levels in DB schemes. Article 49 no longer requires a breakdown of costs by admin, safekeeping, transactions and 'other', although a new section 49.1 requires information on costs in DC schemes. Article 51 no longer requires a 'synthetic graphical indicator' on the risk and return of each investment option. Article 52, requiring the Pension Benefit Statement to include information on past investment performance, is removed. A requirement for EIOPA to produce guidelines on implementation, inserted in the first compromise, is now deleted. The Hayes draft report goes even further than the Council text in simplifying the PBS. Articles 40-54 are replaced with just one article setting out 'guiding principles on the information to be

			covered: - members personal details; - identification of the IORP: - any guarantees; - pension projections; - entitlements, contributions and costs; - investment profile; - past performance. The EC's detailed prescription on format, length, detailed content of projections etc is all removed (Amts 184-198).
None	**Art. 54 – Delegated Act on the Pension Benefit Statement** See Directive	This requires the European Commission to draw up further details of the PBS. Earlier, leaked, copies of the Directive indicated that EIOPA would be charged with this work, which would have raised concerns about democratic control, so the final text is an improvement. Recitals 40 and 48 cover the same point.	Now deleted in the Council texts. This appears to leave implementation to Member States. This Article is also deleted in the Hayes draft report (Amt.198).
None	**Art. 55 – Information to prospective members**	New requirement for prospective members to be informed about the scheme. Would include info on	The Hayes draft report deletes the requirement to inform prospective members about the investment

	The institution shall ensure that prospective members are informed about all the features of the scheme and any investment options including information on how environmental, climate, social and corporate governance issues are considered in the investment approach.	environmental, climate, social and corporate governance issues.	approach to environmental;, climate change, social and corporate governance issues (Amt 200).
None	**Art. 56 – Information to be given to members during the pre-retirement phase** **In addition to the pension benefit statement, institutions shall provide each member, at least two years before the retirement age provided for in the scheme, or at the request of the member, with the following information:** **(a) information about the options available to members in taking their retirement income, including information about the advantages and disadvantages of those options, in a way which supports them in choosing the option most appropriate to their circumstances;** **(b) where the pension scheme is not paid out as a lifetime annuity, information about the benefit payment products available, including their advantages and disadvantages, and the key considerations members should**	New Article	

	consider when making the decision to buy a benefit payment product.		
None	**Art. 57 – Information to members during the pay-out phase** **1. Institutions shall provide beneficiaries with information about the benefits due and the corresponding payment options.** **2. When a significant level of investment risk is borne by beneficiaries in the payout phase, Member States shall ensure that beneficiaries receive appropriate information.**	New Article.	
Art 11.4.c-d (c) where the member bears the investment risk, the range of investment options, if applicable, and the actual investment portfolio as well as information on risk exposure and costs related to the investments; (d) the arrangements relating to the transfer of pension rights to another institution for occupational retirement provision in the event of termination of the employment relationship. Members shall receive every year brief particulars of the situation of the institution as well	**Art. 58 – Additional information to be given on request to members and beneficiaries** **1. On request of a member, a beneficiary or their representatives, the institution shall provide the following additional information:** **(a) the annual accounts and the annual reports referred to in Article 31, or where an institution is responsible for more than one scheme, those accounts and reports relating to their particular pension scheme;**		

as the current level of financing of their accrued individual entitlements. 5. Each beneficiary shall receive, on retirement or when other benefits become due, the appropriate information on the benefits which are due and the corresponding payment options.			
None	**Arts. 59-61 – Scope of prudential supervision**	New articles setting out extent of prudential supervision.	
None	**Art.63 – Supervisory review process** **1. Member States shall ensure that competent authorities review the strategies, processes and reporting procedures which are established by institutions to comply with the laws, regulations and administrative provisions adopted pursuant to this Directive.** **That review shall take into account the circumstances in which the institutions are operating, and, where relevant, the parties carrying out outsourced key functions or any other activities for them. The review shall comprise the following elements:** **(a) an assessment of the qualitative requirements relating to the system of governance;**	63.2 requires stress tests by the regulator, but does not make clear what this would mean in practice.	

	(b) an assessment of the risks the institution faces; **(c) an assessment of the ability of the institution to assess those risks.** **2. Member States shall ensure that competent authorities have monitoring tools, including stress-tests, that enable them to identify deteriorating financial conditions in an institution and to monitor how a deterioration is remedied.** **3. The competent authorities shall have the necessary powers to require institutions to remedy weaknesses or deficiencies identified in the supervisory review process.** **4. The competent authorities shall establish the minimum frequency and the scope of the review laid down in paragraph 1 having regard to the nature, scale and complexity of the activities of the institutions concerned.**		
None	**Art. 64 – Information to be provided to the competent authorities**	New. Gives regulators the powers to obtain reports and valuations from schemes.	The Hayes draft report deletes a proposal that EIOPA should be allowed to develop technical standards on the forms and formats of these internal scheme documents (Amt. 234).

None	**Art. 65 – Transparency and accounting** See Directive	New. Requires national regulators to undertake their duties in relation to the IORP Directive in a transparent and accountable manner. Uncontentious.	
None	**Art. 66 – Professional secrecy** See Directive	New. Requires regulators to respect confidentiality. Uncontentious.	
None	**Art. 67 – Use of confidential information** See Directive	New. Concerns regulators use of confidential information. Uncontentious.	
None	**Art. 68 – Exchange of information between authorities** See Directive	New. Allows exchanges of info between national regulators. Uncontentious.	
None	**Art. 69 – Transmission of information to central banks, monetary authorities, European Supervisory Authorities and ESRB.** See Directive	New. The Directive should not prevent transfers of info to these bodies. Uncontentious.	
None	**Art. 70 – Disclosure of information to government administrations responsible for financial legislation** See Directive	New. Uncontentious	

None	**Art. 71 – Conditions for the exchange of information** See Directive	New. Sets out conditions for exchange of info between Member States.	
None	**Art. 73 – Co-operation between Member States, EIOPA and the Commission** See Directive	New	
None	**Art. 74 – Processing of personal data** See Directive	New	
	Art. 75 – Evaluation and review **Four years after the entry into force of this Directive, the Commission shall review this Directive and report on its implementation and effectiveness to the European Parliament and the Council.**	EC to review and report within 4 years. The expected requirement to report specifically on Solvency matters is not included in the final version, but *is* set out in Recital 57, albeit without any reference to potential legislation .	The review timescale has been extended in the fourth Council Compromise; the EC must now review and report within 6 years. Note that Recital 57 in the Council text no longer refers to Solvency. The review will focus on 'relevant issues, as identified by the Commission' (not EIOPA), although EIOPA will be consulted as part of the review process. However, as indicated above, there could be a rapid transition to IORP Directive Mk III, potentially including Solvency provisions.

			The Hayes draft report also extends the four-year review to six years. (Amt. 259).
None	**Arts.76-80 – Transposition and consequential amendments of existing EU law** See Directive	Member States to bring into force by 31 December 2016. There is no mention of any further 'grace period' between passing laws at national level and implementation in practice. 31st December 2016 appears to the deadline – full stop.	The deadline of 31 December 2016 for entry into force is now removed in the Council text and replaced (Art. 78) with a requirement that the Directive will apply from two years after its entry into force (which is the 20th day after publication in the *Official Journal*). In the Hayes draft report, Art. 77 on EC delegated acts is completely deleted (Amt.263). Hayes also amends Art. 78 so that Member States will be required to implement the new Directive 18 months after its entry into force (by 31 December 2016 in the EC proposal) (Amt.264, Art.78).