**Introduction**

The Retired Staff Association of the ESB (“the Association”) represents over 4,000 former employees of the ESB who are in receipt of pensions from the ESB Pension Scheme.

The ESB Pension Scheme has a unique background[[1]](#footnote-1) and, as such, the National Executive of the Association has reviewed the IORPS II Directive proposals with two objectives:

1. To determine whether any aspects of the Directive proposals affect the unique circumstances of the ESB Pension Scheme
2. To offer wider views in relation to the Directive proposals.

We have pleasure in submitting our comments on the IORPS II Directive proposals and we are happy to meet Department officials on this matter if requested to do so.

We believe that better governance and greater transparency are important strands in the evolution of a healthier pension system in future years.

**SECTION 1 GENERAL OBSERVATIONS/OTHER REMARKS**

***Q)*** *You are invited to detail the views of your Organisation in relation to the proposals contained in the revised IORPS II Directive. This may include overarching views or a particular position in relation to the European Commission’s Impact Assessment or specific proposals contained with IORPS II.*

**Response:**

The proposed Directive has four stated objectives:

1. removing remaining prudential barriers for cross-border IORPs, notably by requiring that the rules on investment and disclosure of information to members and beneficiaries are those of the home Member State, as well as by clarifying procedures for cross-border activities and clearly defining the scope of action of home and host Member State;
2. ensuring good governance and risk management;
3. providing clear and relevant information to members and beneficiaries; and
4. ensuring that supervisors have the necessary tools to effectively supervise IORPs.

We are in favour of objectives (2), (3) and (4).

With regard to (1) above, our view is that any measures to increase the number of cross-border IORPS, through the removal of any legislative/regulatory barriers, must be consistent with the other objectives stated above. This is not necessarily the case if it is possible to relocate pension schemes to jurisdictions with weaker regulatory protection for pension scheme members.

We are drawn to the conclusion that easing the path for cross-border schemes requires greater convergence and strengthening of the rules governing schemes in Member States.

We note the absence of proposals relating to the funding of defined benefit pension schemes. In the absence of any uniformity of the regulations governing the funding of defined benefit pension schemes, there is the risk that the mechanism could be used to seek regulatory arbitrage and in the process reduce member security. We note that Article 13 states that the pension scheme will be operated in accordance with the social and labour law of the host Member State (the home Member State before the transfer becomes the host Member State after the transfer), thereby “*not changing the level of protection of the members and beneficiaries*.” Despite the provisions of Article 13, we remain concerned that opportunities for regulatory arbitrage which are not covered off by Article 13 will be exploited.

One of the cornerstones of EU aspirations is the free movement of people throughout the EU and much work has been done to further this objective over the years. For instance, EU citizens no longer need visas to work in EU countries. With increased mobility of people, workers now have the opportunity to change their jobs and their country of residence more easily than heretofore and work for different employers in different EU countries during their careers. As a result they can end up contributing to a number of different pension schemes in different countries.

There are however considerable differences in the treatment of pensions in different EU countries. Even 'pension tracking services' to keep track of pensioners' entitlements is not consistent across the EU – a matter being investigated by the European Commission.

EU measures to improve portability of pension benefits remain largely aspirational. Reports on the transfer of the capital value of acquired pension rights between occupational pension schemes in different countries detail limited progress. We are supportive of any proposals to facilitate cross border IORPS including the transfer of pension schemes across Member States but we feel that we must highlight the unequal treatment of pension benefits in different EU countries and in particular Irish occupational pension schemes being subject to a cumulative levy of 2.7% of assets over the five years from 2011-2015.

Improved ability to transfer pension schemes should have the added benefit of reducing the ability of Member States to impose arbitrary taxes on pension assets.

With regard to (2), we believe that it is unacceptable from a risk perspective to allow employers to renege on their commitments to employees taking into account the financial benefit to employers as a result of the operation of a pension scheme, this financial benefit often gained over many years whereby employers have secured their employees’ labour on the basis of both pay and the promise of deferred pay and the deferred pay element can be reduced or eliminated due to the failure of the EU and the Irish Government to legislate appropriately for the protection of pension benefits in the case of solvent employers (the EU Insolvency Directive covers the protection of pension benefits in the case of insolvent employers).

With regard to (3), we believe that additional governance measures are required, whether these are initiated at EU or national level. Subject to concessions for small schemes, we are in favour of the requirement to hold an Annual General Meeting which would require the Trustees to present their report for the year and to address member queries. Besides the direct benefit of holding an AGM, we believe that the requirement to do so would result in a greater willingness of Trustees to engage with member queries proactively.

**SECTION 2 KEY PROPOSALS IN IORPS II DIRECTIVE**

**TITLE 1: GENERAL PROVISIONS (**Articles 1 to 13)

***Q)*** *What is your view in relation to the logic and potential impact of proposals to facilitate cross border IORPS activity including the transfer of pension schemes across Member States?*

**Response:**

As stated above, we must ensure that regulations, many of which are framed in the context of the increasing defined contribution pension market, do not create opportunities for regulatory arbitrage which could allow a defined benefit pension scheme to be relocated to a jurisdiction which allows lower funding levels and/or weaker employer supports. Easing the path of cross-border schemes must be accompanied by uniform regulations and for so long as the funding regulations of defined benefit schemes differ by jurisdiction then we cannot see how a regime for cross-border schemes can enhance member security.

We note that paragraph 6 of Article 13 states “*The competent authority of the home Member State of the transferring institution shall, within one month of receiving the information referred to in paragraph 5, inform the competent authority of the home Member State of the receiving institution of the requirements of social and labour law relevant to the field of occupational pensions of the host Member State under which the pension scheme must be operated. The competent authority of the home Member State of the receiving institution shall communicate this information to the receiving institution.*”

Presumably there should be a further requirement that prior to any change in the social and labour law in the Member State of the transferring institution, the competent authority should be required to inform the competent authority in the Member State of the receiving institution of the revised requirements of social and labour law which the pension scheme must be operated?

**Any Further Comments Regarding Proposed Title 1 Provisions?**

**Response:**

Article 13 states that “*Unless national social and labour law on the organisation of pension systems provides otherwise, the transfer and its conditions shall be made subject to prior approval by the members and beneficiaries concerned or, where applicable, their representatives.*” We believe that prior approval of members and beneficiaries should be required and we are concerned about the possibility of approval not being required depending on national social and labour law.

**TITLE 2: QUANTITATIVE REQUIREMENTS** (Articles 14 to 20 are largely already part of existing IORP Provisions)

**Response:**

We have no comment on this section. As stated, Articles 14 to 20 are relatively unchanged.

**TITLE 3: CONDITIONS GOVERNING ACTIVITIES** (Articles 21 to 37)

***Q)*** *What are your views in relation to the proposals which would require ‘those who effectively run schemes’ to have professional qualifications? (The current Directive offers the option of placing this requirement on those running the scheme OR the scheme’s advisers.)*

**Response:**

Article 22 states “*The system of governance referred to in paragraph 1 shall be proportionate to the nature, scale and complexity of the activities of the institution.*”

However, Article 23 states that “*all persons who effectively run the institution or have other key functions fulfil the following requirements when carrying out their tasks:*

1. *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*
2. *they are of good repute and integrity (requirement to be proper).*”

It is not clear to us that these Articles are compatible. It does not seem proportionate that all persons who effectively run a small, straightforward institution need to have professional qualifications. We would suggest that (a) be reworded to “their professional qualifications and/or knowledge and/or experience …”

***Q)*** *What are your views in relation to the proposed new governance requirements on risk management, outsourcing and internal audit? This would include the requirement for schemes to compile a ‘Risk Evaluation for Pensions’ report.*

**Response:**

Once these requirements should be proportionate to the nature, scale and complexity of the activities, then we are in agreement.

***Q)*** *What are your views in relation to the proposals which would require that schemes have a remuneration policy? This would include disclosing the pay of those who run the scheme.*

**Response:**

In principle, the requirement to have a remuneration policy and disclosure of remuneration seems appropriate.

We are conscious of the trustee role which is frequently non-paid.

Paid roles are typically undertaken by persons providing services to multiple schemes. There may be a difficulty establishing the remuneration that relates to the performance of a particular role. If an external party providing a service is doing so as an employee of a service provider, then the fees payable to the service provider may be unrelated to the remuneration of the person providing the service.

***Q)*** *What are your views in relation to the proposals which would preclude restrictions on long-term investments?*

**Response:**

We understand that the Directive imposes a duty on Member States to require institutions to invest in accordance with the ‘prudent person’ rule. The Directive also refers to measures such as requiring the assets to be “properly diversified”. As such, we disagree that the proposals preclude restrictions on long-term investments. The stated principles appear to us to have the effect of restricting long-term investments.

We note, however, that a stated objective of the proposals is “*to reinforce the capacity of occupational pension funds to invest in financial assets with a long-term economic profile and thereby support the financing of growth in the real economy*.” We are concerned that there could be further regulatory interventions which have the effect of directing investment towards particular areas rather than allowing those operating IORPS to determine in line with the prudent person rule and other principles to determine the appropriate investment strategy.

*Q) What are your views regarding the logic and impact of proposals which may require DC schemes to appoint a depository, with responsibility for safe-keeping of assets and oversight?*

**Response:**

There have been a number of instances of governance failures in relation to the assets of DC schemes, in some high profile cases resulting in total loss for pension contributors. Any measures which can reduce or avoid this eventuality should be entertained.

**Any Further Comments Regarding Proposed Title III Provisions?**

**Response:**

No further comment.

**TITLE 4 INFORMATION TO MEMBERS** (Articles 38 to 58)

***Q)*** *What are your views in relation to the proposals regarding information requirements regarding members, prospective members and beneficiaries?*

**Response:**

The proposals are well-meaning but it is not clear that any regulatory proposals in this area will achieve the presumed objective of better-informed pension scheme members, prospective members and beneficiaries who, being better informed, take more appropriate steps with regard to the level of contributions they are paying and any investment options available in order to better provide for their retirement.

***Q)*** *What are your views in relation to the proposals for a prescribed mandatory, EU wide harmonised Pension Benefit Statement, to be sent at least annually to every scheme member?*

**Response:**

The regulation of the disclosure of information to members in Ireland has resulted in lengthy documents which many people find difficult to comprehend. The following proposals are welcomed:

* that the pension statement should not be more than two pages in length
* electronic availability, once a paper version can be requested free of charge

**Any Further Comments Regarding Proposed Title IV Provisions?**

**Response:**

It should be a requirement to provide information automatically to deferred members and to pensioners. Access to information should not be restricted to personal information describing a member’s benefits or prospective benefits but should include a range of information relating to the scheme’s finances and governance.

**TITLE 5 – PRUDENTIAL SUPERVISION** (Articles 59-71)

***Q)*** *What are your views in relation to the proposals regarding general rules for prudential supervision including chain outsourcing and the possibility to require stress tests?*

**Response:**

These proposals are well-justified.

**Any Further Comments Regarding Proposed Title IV Provisions?**

**Response:**

No further comment.

**TITLE 6 – FINAL PROVISIONS (Transposition)**

***Q)*** *What are your views in relation to the proposed implementation timeframe in the Directive which under the existing proposal would require that Member States bring the new Directive into force by 31 December 2016?*

**Response:**

This appears to be a practical, but tight, timescale with regard to the proposals concerning scheme governance.

This timescale may not be practical with regard to the proposals concerning disclosure of information to members i.e. Title 4.

**Any Further Comments Regarding Proposed Title VI Provisions?**

**Response:**

No further comment.

**SECTION 3 ESTIMATED COSTINGS**

***Q) In the Impact Assessment attached to IORPS II, potential cost estimations are provided, in the form of initial once-off costs as well as annual recurring costs, in regards to implementation of various proposals contained in the Directive. You are invited to detail the views of your organisation in relation to the robustness or otherwise of these estimations and/or to provide any alternative estimation of costs (with reasoning) you believe would likely arise in relation to some or all of the proposals.***

**Response:**

We note that the assessment suggests that the recurrent administrative burden will be in the order of 6% and that in overall terms this is estimated to be around €17 to 51 million a year, or 27 to 80 cents per member/beneficiary per year.

We also note that the one-off implementation costs are estimated at €1.4bn in total or around €22 per member/beneficiary.

The costs are likely to be proportionately higher in the case of smaller countries and/or smaller institutions.

Taking these average costs, if the proposals result in increased costs of say €74 per member/beneficiary – taking €22 plus say 80 cents over a period of a member’s career and the period of draw down (say 65 years in total), then the costs of improved governance appear justified. However, we are concerned that the costs could be significantly higher in the case of smaller countries/institutions.

The proposals could also have unforeseen consequences for instance the amalgamation of smaller service providers which could dampen competition in some quarters. Such changes, if they transpire, could over time result in further increased cost. On the other hand, the proposals could have the effect of increasing average scheme size, perhaps on a cross-border basis, and this should lead to efficiencies over time.

1. The ESB Pension Scheme is established and operated under specific legislation and effectively cannot be wound up. [↑](#footnote-ref-1)