Ius Laboris Belgium Global HR Lawyers
Claeys & Engels

Newsletter: **The New Act on IORPs is coming**

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Dear reader,

On 20 December 2018, Parliament passed the act transposing directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provisions (the so-called IORP II directive; here, the "Directive") and also amending the Act of 27 October 2006 on the supervision of institutions for occupational retirement provisions (the "Act on IORPs").

This Act (the "New Act") transposes the Directive into Belgian law. The Belgian legislator thereby faithfully incorporated the provisions of the Directive, but also made some limited changes to the Act on IORPs.

The New Act enters into force on 13 January 2019, which means that the Belgian legislator respected the deadline for transposing the Directive into Belgian law. There are transitional measurements for pension funds or institutions for occupational retirement provisions ("IORPs") existing on 13 January 2019.

The FSMA is said to be working on no fewer than 11 circular letters which will lay out the IORPs guidelines and recommendations on implementing the new obligations. These circular letters will, most likely, be published on the FSMA's website in the following months. IORPs must take these into account when implementing the obligations of the New Act.

In this *Newsletter* we list for you the most important changes.

We hope you enjoy the read!

1 Management structure of IORPs

The Directive contains only a few provisions on the management structure of an IORP. According to the Directive, there should be at least a management or supervisory body, but Member States are left to decide on how to put this into practice.

In Belgium, in the Act on IORPs, a system where every IORP is (was) required to assume the legal form of an OFP (Organisation for Financing Pensions) was implemented. Every OFP needs to have a board of directors and a general assembly. The sponsoring undertakings should be represented in the general assembly. The Act on IORPs also aimed to achieve a balance between the competences of both bodies. In particular, the Act on IORPs establishes that for certain decisions of the board of directors, a ratification of the general assembly is necessary.

There are no fundamental changes to this system in the New Act. Yet, a few small changes have been made, namely:

1.1 Permanent representation of legal entities

The Act on IORPs determined that a legal entity who is a member of the general assembly should at least appoint one permanent representative. This should be a partner, manager, director, member of the executive committee or employee of the legal entity. In the New Act, it becomes possible to appoint someone as representative who is not a partner, manager, director, member of the executive committee or employee of the legal entity, but of the company, the institution or the entity that has power of control of the entity (e.g., the mother undertaking). This modification, which was not required by the Directive, aims to simplify the representation in the general assembly, which will be welcomed by large groups of undertakings and pension funds with cross-border activities. There is no such modification for permanent representation on the board of directors or any other operational body.

1.2 Voting rights in multi-employer pension funds

Another modification in the New Act that was not imposed by the Directive is a provision applying to “true” multi-employer funds, which are pension funds where the sponsoring undertakings are not (necessarily) part of the same group of undertakings. Under current legislation, such sponsoring undertakings can merely be extraordinary members in such an OFP, even with no voting rights. The New Act now states that they should have at least voting rights concerning (1) matters belonging to the power of the general assembly and concerning their own pension schemes, (2) the appointment of independent directors, (3) decisions of the general assembly in dispute resolution between the board of directors and the social committee, when the social committee has a decision-making power (please note that it does not become mandatory to grant such a decision-making power to the social committee). Also, the New Act contains a general provision stating that a fair representation should be granted to these sponsoring undertakings in the procedure for convening, conducting and voting in the assembly. They can also make a proposal to the general assembly to appoint an independent director, which should be approved by all the sponsoring undertakings. They can also put other topics on the agenda of the general assembly and of the board of directors.

1.3 Publication formalities

The only changes to the publication formalities in the New Act are that: (1) only nominations of the board of directors should be published and no longer those of the other operational bodies, (2) the annual report of the board of directors should be submitted to the National Bank, together with the annual accounts, and (3) every OFP should mention not only the

term Organisation for Financing Pensions or OFP and its company's seat in every act or document, but also its enterprise number.

2 Fit & proper

The Act on IORPs already stated that members of the operational bodies should have the necessary professional integrity and appropriate expertise (the so-called *"fit & proper"* requirement). In 2014, it was clarified in the law that these requirements apply on a permanent basis. In the New Act, these requirements are restated and further developed. It is important to note that now, by analogy to the system of the banks, the appointments (and possible renewals) of the members of the operational bodies and of the key functions only take effect after the approval by the FSMA of the proposed appointment. When it is a first appointment, the FSMA first discusses the appointment with the National Bank. The IORP should also immediately inform the FSMA of every new fact or element that can have a significant influence on the fitness or properness and of every resignation and dismissal.
The New Act also explicitly states that the board of directors has ultimate responsibility for the compliance with the law.

3 Governance of IORPs

The Act on IORPs contained a few general, open provisions concerning governance. Also in the circular letter and related note CPP-2007-2-AIORPs of 23 May 2007 on the corporate governance of IORPs, the FSMA clarified its expectations on the concrete implementations of these open provisions.

The New Act incorporates these governance requirements in the Act itself. Generally, the new governance requirements of the New Act and the Directive will not cause a major revolution for Belgian IORPs, since they are already familiar with the governance expectations of the FSMA, due to the above-mentioned circular letter and the note of 2007. Concerning governance, the implementation of the Directive will mostly result in refining and incorporating the existing "*soft law"* into legislation ("*hard law")*. Besides that, there are a few novelties, such as the risk-management function and the own-risk assessment, which are explicitly adopted in the system of governance.

3.1 System of governance

As a general principle, the New Act states that IORPs should have in place an effective system of governance which provides for a sound and prudent management of their activities. This system must be proportionate to the size, nature, scale and complexity of the activities of the IORP.

The system of governance contains:
- an adequate and transparent organisational structure;
- an effective internal control system;
- reasonable measures, including contingency plans, to ensure continuity and regularity in the performance of the activities of the IORP;
- an effective risk-management system;
- a requirement to draw up and apply written policies in relation to:
  - risk-management;
  - internal audit;
  - where relevant, actuarial activities;
  - where relevant, outsourced activities.

  Some of these policies may appear new in the Belgian context, but in practice they are already more or less (implicitly) addressed in existing policies of IORPs;
- a remuneration policy;
- proper and independent key functions concerning internal audit, risk-management, compliance and actuarial activities.

3.2 Risk-management system and risk-management function

The requirement for an effective and well-integrated risk-management system is for

Belgium one of the major reforms of the Directive concerning governance. Belgian IORPs already take risks concerning financing, investments and operational management of the IORP into account. The New Act now requires that this happens in a more structural and documented way.

First, the IORP will have to establish a risk-management system where it can identify, measure, monitor, manage and report to the board of directors the risks at an individual and at an aggregated level. This includes risks in the area of asset-liability management, investment (in particular, investment in derivatives, liquidity and concentration risks, environmental, social and governance risks relating to the investment portfolio, etc.) as well as operational management (such as risks concerning ICT, personal data, management risks etc.). Every IORP will have to conduct a deep risk analysis to identify the areas of the most important risks and how they can assess or measure such risks, and most importantly, how they can manage the risks. Where members and beneficiaries bear risks, the risk-management system will also have to consider those risks from the perspective of the members and beneficiaries.

This is to be documented in a policy, the "risk-management policy", that will be subject to prior approval by the board of directors. The board of directors will adapt the policy depending on any significant change and review it at least every three years.

However, the board of directors does not have to go through this alone.

The New Act, in implementing the Directive, creates a new key function: the risk-management function in the person of the "risk manager". The person responsible for the risk-management function will actively be involved in determining the risk strategy and the risk-management system, as well as every policy decision that can have a significant influence on the risks facing the IORP. The risk manager sees to it that the risk-management system covers all the risks facing the IORP and ensures its proper implementation. In short, the risk manager will be actively involved in every strategic decision of the board of directors and will therefore attend the board of directors meetings on a regular basis, or even permanently. Like the other key functions, it must be an internal of external independent person (natural or legal person). The principle of proportionality may be taken into account. Large IORPs should best rely on a fully independent person, whereas smaller IORPs can appoint a person executing this function in the sponsoring undertaking, or even someone who is a member of the board of directors of the IORP.

3.3 Own-risk assessment ("ORA")

The IORP should not only contain an appropriate risk-management system. The IORP must also perform an own-risk assessment ("ORA") at least every three years or immediately following any significant change in the risk profile of the IORP (e.g., managing a new type of pension scheme, joining of new sponsoring undertaking, collective transfer of obligations and the related assets,...). This own-risk assessment must be proportionate to the size, nature, scale and complexity of the IORP and its activities and includes, among others, the governance system (with an accent on the risk-management function and prevention of conflicts of interest), financial aspects (an assessment of the overall funding needs of the IORP, including the need of a recovery plan), operational risks, the risks to members and beneficiaries, and risks concerning environmental, social and governance factors when considered in investment decisions.

For an effective own-risk assessment, the IORP must have in place methods to identify and assess the risks. The own-risk assessment will therefore be a valuable instrument for strategic decisions of the board of directors. The risk-management function will assist the board of directors with the own-risk

assessment. But also the other key functions (see below point 3.4) will make their recommendations to the board of directors regarding the developing and implementing of the own-risk assessment.

The New Act requires the IORPs to notify the FSMA within one month of the performed own-risk assessment. The FSMA has already stated that it will focus its attention on such assessments and that it will issue a circular letter in this regard with further guidelines and recommendations.

3.4 Key functions

According to the New Act, every IORP must have four, or in certain circumstances, three key functions: the risk-management function, the actuarial function, the internal audit function and the compliance function. The first three are also mentioned in the Directive. The fourth, the compliance function, was already introduced in the governance circular letter CPP-2007-2-AIORPs of 23 May 2007 of the FSMA, but is now perpetuated in the New Act.

The **risk-management function** is described above in point 3.2.

The tasks of the **actuarial function** are mostly similar to the tasks of the designated actuary: for example, overseeing the calculation of technical provisions, comparing the assumptions underlying the calculation of the technical provisions with the experience, informing the board of directors of the IORP of the reliability and adequacy of the calculation of technical provisions, etc. It is obligatory to appoint an actuarial function when the IORP manages pension schemes falling into the categories of "*defined benefit*", "*cash balance*" or "*defined contribution* with a guaranteed rate". It is not obligatory for a "*pure defined contribution*" pension scheme.

The **compliance function** is already known to Belgian IORPs, but now it receives a legal basis in the New Act. The compliance officer must ensure the compliance of the IORP with the legal and regulatory requirements and with its own policies. Also, the compliance function assesses the compliance risks of the IORP.

Finally, every IORP must have an **internal audit function** to evaluate the adequacy and effectiveness of the internal control system and other elements of the system of governance. Also, more than at present, the internal auditor will have to ensure the interaction between the various key function holders.

According to the explanatory memorandum of the New Act, the key functions together with the persons responsible for the operational tasks form the lines of defence against risks: the first line of defence is the internal control in the operational services. The second line is the risk-management function, the actuarial function and the compliance function and the third line of defence is the internal audit function.

Every key function should be carried out by an independent person from inside or outside the IORP, possibly accompanied by another person. It can be a natural or a legal person, one person or more persons acting as a collective body. One person can carry out more than one key function, with the exception of the internal auditor, which must be independent from the other key functions. For example, the *risk manager* can also be responsible for the compliance function and/or the actuarial function, or the actuarial function can also carry out the compliance function (with or without support of third parties) if that person has the necessary expertise concerning compliance and/or actuarial matters and if the joint performance of the different key functions does not raise a conflict of interest.

In principle, the person responsible for carrying out the key function must be different from the one carrying out a similar key function in the sponsoring undertaking, but based on the principle of proportionality, some IORPs can derogate from this rule. Small or non-complex

IORPs can for example carry out the internal audit function or the compliance function through the same person as the sponsoring undertaking, provided that the IORP has a sound conflict of interest policy.

The key function holders must report at least once a year to the board of directors on their task, material findings and recommendations. Also, the key function holders have to contact the board of directors pro-actively when they observe negative risk developments or significant breaches of the legislation. (see point 7 concerning the *"whistle blowing"* obligations towards the FSMA).

3.5 Remuneration policy

The IORP must, from now on, establish and apply a remuneration policy. This is a requirement that already applied to other companies in the financial industry and that is now transposed to pension funds. The policy applies to (1) all members of operational bodies, (2) key function holders, also if outsourced and (3) categories of staff whose professional activities have a material impact on the risk profile of the IORP.

The general substantive requirements are laid out in the New Act, namely, that the policy should (1) support the sound, prudent and effective management of the IORPs, (2) be in line with the long-term interests of the members, (3) avoid conflicts of interest, (4) not encourage risk-taking which is inconsistent with the risk profile, and (5) be clear, transparent and effective governance with regard to remuneration and its oversight. We can expect this to be further clarified in a circular letter from the FSMA.

4 Cross-border activities and transfers

4.1 Cross-border activities

In the first IORP Directive, a framework was created for cross-border activities of IORPs. Cross-border activity means operating a pension scheme where the relationship between the sponsoring undertaking and the members and/or the beneficiaries is governed by the social and labour law of a Member State (host Member State) other than the home Member State of the IORP; for example, when a Belgian IORP operates a pension scheme governed by Dutch social law.

With the Act on IORPs, Belgium put itself on the map as a prime location for pan-European pension funds. To this end, a flexible legal entity was created (the OFP) and a generous tax regime was put in place. In Belgium, there are no quantitative capital requirements or restrictions on the assets covering the technical provisions (other than provided in the Directive). Besides the realisation of benefits of scale, this can be a reason for the sponsoring undertakings to have their pension schemes managed in Belgium. Of course, a Belgian IORP should define its technical provisions (and possible solvency margin) based on prudential actuarial and economic hypotheses and cover it with prudently chosen and valued assets. The New Act contains no major changes. For Belgian pan-European pension funds it is probably the most important that the following did not made the final text of the Directive: the Directive (and also the New Act) does not impose quantitative capital requirements, such as are applicable to insurance companies (Solvency II).

The provisions on cross-border management in the New Act are transposed almost word for word from the Directive. The most important innovations are:

- some terminological clarifications;
- facilitation of the *"fully funded"* principle for pan-European pension funds;
- introduction of a procedure for cross-border transfers.

The goal of these changes is primarily to facilitate cross-border activities and transfers and to clarify the procedures.

Finally, the bylaws of the cross-border IORPs will have to define a dispute resolution procedure in case of disputes between boards of directors and social committees, if the social committees have decision-making power. Social committees are found mainly in pan-European pension funds.

Below, the most important changes are listed.

4.2 Fully funded: (limited) facilitation

When an IORP practises a cross-border activity, the technical provisions must at all times be fully funded by sufficient assets. A pan-European pension fund may therefore never be underfunded. Now, a nuance is made to this fully funded requirement. There is no departure from the fully funded principle, but if the FSMA determines an underfunded state, the FSMA will intervene promptly and require the IORP to immediately draw up and submit for approval appropriate recovery measures and implement them without delay. Therefore, a recovery plan, be it of short duration, is a possibility for a pan-European pension fund (which was not possible before).

4.3 Cross-border transfer from another Member State to Belgium

The Directive and the New Act determine a procedure on cross-border transfers between IORPs. Cross-border transfers means a situation where the IORP registered or authorised in a Member State transfers all or a part of a pension scheme's liabilities and technical provisions, as well as corresponding assets or cash equivalents to another IORP in another Member State. A cross-border transfer does not necessary give rise to a cross-border activity (e.g., when a pension scheme is managed by a pan-European pension fund and is after transfer managed in the home Member State), but usually that will be the case. The procedure for cross-border transfers can be summarised in six steps.

Step 1: Social procedure

A cross-border transfer is subject to the approval of a majority of the members and a majority of the beneficiaries or their representatives (e.g., trustees). This majority is determined by the social law applicable to the pension scheme to be transferred. Of course, the sponsoring undertaking also needs to approve the transfer.

Step 2: Transfer agreement

The transferring and the receiving IORP conclude an agreement on the conditions and modalities of the transfer.

Step 3: Submit the authorisation file to the FSMA

The Belgian IORP must then submit the application for authorisation of transfer to the FSMA. Besides the evidence of prior approval (Step 1) and the agreement between the transferring and the receiving IORP (Step 2) the application must contain the following information:

- a description of the main characteristics of the pension scheme;
- a description of the liabilities or technical provisions to be transferred and other obligations, as well as corresponding assets or cash equivalent thereof;
- the names and locations of the main administrations of the transferring IORP and the sponsoring undertakings.

Step 4: Communication between the FSMA and the competent authority of the other Member State

The FSMA then forwards the application to the competent authority of the home Member State of the transferring IORP.

Step 5: Competent authority of the home Member State

The competent authority of the transferring IORP has 8 weeks to assess whether:

- (in the case of a partial transfer) the long-term interests of the members and beneficiaries of the remaining part of the scheme are adequately protected;
- the individual entitlements of the members and beneficiaries are at least the same after the transfer;
- the assets to be transferred are sufficient and appropriate to cover the liabilities/technical provisions in accordance with the applicable rules in the home Member State of the transferring IORP.

Step 6: Assessment of the FSMA

The FSMA makes its decision to grant (or refuse) the transfer within 3 months after receiving the complete transfer file. The FSMA only assesses whether:

- all the information has been provided;
- the administrative structure, financial situation and the good repute or professional qualifications or experience of the persons running the receiving IORP are compatible with the proposed transfer;
- the long-term interests of the members and beneficiaries of the Belgian IORP are adequately protected during and after the transfer;
- the fully funded principle is respected (where the transfer results in a cross-border activity);
- the assets to be transferred are sufficient and appropriate to cover the liabilities/technical provisions in accordance with the Act on IORPs.

Step 7: Notification by the FSMA

The FSMA immediately notifies its decision (refusal or permission) to the Belgian IORP. The competent authority and the transferring IORP are informed within 2 weeks of taking that decision. Where the transfer does not result in a cross-border activity, the dossier is completed and the transfer can be executed.

Step 8: Cross-border activity

Where the cross-border transfer results in a cross-border activity (which is mostly the case), the FSMA informs the Belgian IORP within a week after it receives this information from the competent authority of the transferring IORP on:

- the social and labour law relevant to the transferred pension schemes;
- the information requirements;
- (if relevant) the requirement to appoint a depositary for the safe-keeping of assets and oversight duties.

On receiving the communication (or if no communication is received within 7 weeks after the approval of transfer (Step 6)), the Belgian IORP may start to operate the pension scheme.

In the case of disagreement between the FSMA and the foreign competent authority, EIOPA may conduct mediation upon request of either of the competent authorities or on its own initiative.

4.4 Cross-border transfer from Belgium to another Member State

The transfer procedure from Belgium to another Member State is *mutatis mutandis* the same as when Belgium operates as the home Member State. Also here, a majority of the members and a majority of the beneficiaries or their representatives must approve. The explanatory memorandum refers to Article 34 AOP for pension schemes to employees. This means that, as the case may be, the individual agreement or collective bargaining agreement (for active members) is necessary to execute the transfer. However, deferred members or beneficiaries receiving an annuity are not bound by the collective bargaining agreement, so in principle their (implied) individual consent is necessary.

4.5 Dispute resolution procedure for social committees

In the execution of (foreign) social law applicable to the pension schemes managed by the IORP, the IORP can set up one or more (e.g., per country) social committees. These social committees are most common in pan-European pension funds. If the social legislation of a Member State for example requires that certain decisions are adopted on a joint basis, this can be organised at the level of the social committee. Social committees are not part of the (operational) bodies of the IORP, but the bylaws of the IORP can grant them decision-making power. From now on, the bylaws should also lay out the dispute resolution procedure in case of disagreement between the social committee and the IORP. If the board of directors does not agree with the outcome of the procedure because it includes a substantial risk that the IORP does not comply with its legislative requirements or that it could imply significant consequences for the members and beneficiaries, the board of directors shall submit the matter to the general assembly, which takes the necessary measures. The board of directors should also inform the FSMA.

5 Investment policy and depositary ("custodian")

5.1 Investment policy

The Directive attaches great importance to the so-called "ESG" factors (environment, social & governance). Environmental, social and governance factors, as referred to in the UN-supported principles of responsible investment are, according to the Directive, important for the investment policy and risk management of the IORP.

The New Act even adds that a proper system of governance includes that environment, social and governance factors are considered in investment decisions on the assets. Also, the statement of investment principles (SIP) and other informational documents (see point 6), must describe how the ESG factors are taken into consideration in the investment approach. Although the New Act does not contain concrete guidelines on how and to what extent ESG factors should be taken into account, every IORP will have to focus (more) on this aspect in the future.

5.2 Depositary

The Directive devotes an entire section to the depositary and gives Member States various options. The home Member State can require that IORPs appoint one or more depositaries for the safe-keeping of assets.

The Act on IORPs already prescribed that all Belgian IORPs should deposit their assets liable for deposit with the Belgian National Bank or a credit or investment institution whose licence allows the activity of depositary. This principle is renewed in the New Act and extended to all the assets of the IORP. The Belgian legislator chose to only impose tasks of safekeeping on the depositary. The Belgian legislator did not make use of the possibility in the Directive to impose oversight duties on the depository.

The depositary must be appointed by means of a written contract between the depository and the IORP. The depository must not carry out activities which may create conflicts of interest, unless the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other tasks, and that potential conflicts of interest are properly managed and disclosed to the board of directors of the IORP. The New Act clarifies that the depositary is liable with regard to the IORP and the members and beneficiaries for the damage relating to the failure to perform its obligations or its improper performance of them, even when the depositary entrusted the assets as a whole or in part to a third party.

The Directive allows that the home Member State requires that IORPs with a cross-border activity appoint one or more depositaries when the IORP manages a pension scheme where members and beneficiaries fully bear the investment risk (this is the case in pure defined contribution schemes), provided that the appointment of a depositary is required under its national law. The Belgian legislator chose to implement this option.

Finally, the New Act introduces the obligation for IORPs who manage a so-called solidarity scheme to also deposit the assets covering the solidarity scheme.

6 Information

6.1 In general

1-
The Directive contains an extensive section on the information to be given to prospective members, members (these are active and deferred members) and beneficiaries (these are retired members and beneficiaries of a survivor's or orphan's pension).

Although Belgium always treated information requirements as social law, the legislator chose to implement the information requirements of the Directive almost verbatim into the prudential legislation (the New Act).

That choice was made in consideration of the cross-border activities, where Belgian IORPs also need to fulfil the information requirements towards members and beneficiaries resorting under the social and labour law of another Member State, and for whom therefore the information requirements in Belgian social law do not count.

The legislator specifies that including the information requirements in the New Act does not exempt the IORP from complying with Belgian social legislation.

Since these new information requirements are on certain points broader than the requirements in Belgian social law, the legislator has announced a review of Belgian social law in this regard. This is to ensure a *level playing field* with regard to information requirements between IORPs and insurance companies (see point 6.2).

2-
In general, the Directive attaches great importance to the adequate use of language, the readability and the coherence of the documents received by the (prospective) members and beneficiaries and the manner in which the information is provided.

The New Act takes these expectations into account and requires that the information be regularly updated, written in a clear manner (avoiding the use of jargon), not misleading, presented in a way that is easy to read, available in an official language of the Member State whose social and labour law is applicable to the pension scheme concerned and made available free of charge through electronic means or on paper.

The information requirements stated in the New Act can be fulfilled by the IORP, the sponsoring undertaking or a third party. The explanatory memorandum explicitly makes reference to Sigedis, which can be charged with a part of these information requirements, through, among others, *My Pension.*

6.2 The new information requirements

The Directive divides the information requirements depending on the different phases of the accrual of pension rights: (1) the phase before affiliation (prospective members), (2) the phase of accrual of an occupational pension (members), (3) the phase before retirement, (4) the pay-out phase of the occupational pension (beneficiaries).

The New Act derogates somewhat from this order to structure the information requirements

more logically, but implements the requirements of the Directive integrally:

- The New Act introduces certain completely new information requirements towards the prospective members. The IORPs must from now on inform prospective members of any relevant option available to them, including investment options, the relevant features of the pension scheme (including the kind of benefits), whether and how ESG factors are considered in the investment approach and where further information is available.
  When the prospective members bear an investment risk or can take investment decisions, the IORP must provide prospective members with extra information (e.g., information on the past performances of investments, the structure of costs borne by members and beneficiaries).
  Prospective members who are automatically enrolled in a pension scheme (which is in Belgium always the case for employees, as from the time that they fulfil the enrolment conditions) should receive this information promptly after their enrolment. In practice, a welcome brochure containing this information can be a possibility. Prospective members who are not automatically enrolled in a pension scheme (e.g., self-employed persons who choose to enrol in the voluntary occupational pension for the self-employed or when employees make use of the voluntary occupational pension for employees), should receive this information before they join the pension scheme.

- Also, the New Act obliges the IORP to provide sufficient information to the members and beneficiaries about the conditions of the pension scheme, including, information on the investment profile, the nature of the financial risks borne by the members and beneficiaries and the structure of costs borne by members and beneficiaries for pure defined contribution schemes,.... Many of those requirements are already provided in Belgian law.

- The most important change concerns the annual benefit statement that will from now on be called: "the pension benefit statement". The information provided in the pension benefit statement is enlarged. In addition to the information provided at present, the pension benefit statement should, amongst others, also contain:
  - where applicable, information on full or partial guarantees under the pension scheme;
  - information on pension benefit projections based on the retirement age. If the pension benefit projections are based on economic scenarios, that information must also include a best estimate scenario and an unfavourable scenario;
  - information on the contributions paid by the sponsoring undertaking and the members into the pension scheme, at least over the last 12 months;
  - a breakdown of the costs deducted by the IORP over the last 12 months when this has an impact on the pension rights of the members.

  IORPs must make the pension benefit statement annually available to the members, including the deferred members. Nevertheless, the AOP abolished the obligation to provide a pension benefit statement to deferred members in 2016. Since 2016, deferred members have had access to their pension details through *My Pension* and the Second Pillar Database (DB2P), managed by Sigedis. In the Social Affairs Committee, the Minister for Pensions stressed that it is the intention to adapt social law to make the new information requirements also applicable to insurance companies through a separate legislative initiative. The legal framework concerning Sigedis would be adjusted, so that the information in *My Pension* will be

sufficient to fulfil the information requirements to deferred members.

As long as this separate legislative initiative is not available (it remains to be seen if it will come soon, considered the recent resignation of the Federal government), IORPs will once again need to separately inform deferred members.

- The New Act also contains the obligation to inform the members about the benefit pay-out options, in due time before the retirement age. During the pay-out phase, the IORP must inform the beneficiaries about, among others, the benefits due and the corresponding pay-out options.

- Lastly, the IORP must provide the members, beneficiaries or their representatives on their request the following information: (1) the annual accounts and the annual reports (they can be limited to the particular pension scheme of the member/beneficiary), (2) the SIP, and (3) further information about the assumptions used to generate the pension projections.

7 Supervision by the FSMA

The FSMA is responsible for the prudential supervision and the compliance with the New Act.

In general, the FSMA receives, through the New Act, the necessary powers to review the strategies, processes and reporting procedures which are established by IORPs to comply with the legislative framework. That assessment relates to the adequacy of the system of governance, the assessment of risks facing the IORP and the measures taken by the IORP to assess and manage those risks. In relation to that assessment, the FSMA will develop monitoring instruments, including stress tests, to enable it to identify deteriorating financial conditions in an IORP and to monitor how such deterioration is remedied.

The New Act also contains provisions considering powers of intervention and supervision of the FSMA. There are some new (information) requirements towards the FSMA. Some existing requirements now receive a legal basis:

- Every IORP is also required to inform the FSMA within one month of every modification to its system of governance, its policies (e.g., its outsourcing policy), its remuneration policy, its management agreement.

- The FSMA must approve in advance the appointment or renewal of the members of operational bodies and the key function holders (see point 2).

- The FSMA must be informed about the resignation or dismissal of the members of operational bodies and of the key function holders and about every element that is a modification to the information provided at the time of appointment and that might have a significant influence on the fit and proper requirements (see point 2).

- Implementation of a "*whistle blowing*" obligation of the key function holders: the holders of a key function must inform the FSMA if the board of directors does not take appropriate and timely remedial action in the following cases:
  - they have discovered a substantial risk that the IORP will not comply with materially significant statutory requirements and where this could have a significant impact on the interests of members and beneficiaries;
  - they have observed a significant material breach of laws, regulations or administrative procedures applicable to the IORP and its activities.

- IORP must notify the FSMA of any outsourcing of a function, activity or operational activity under the scope of the New Act. Where the outsourcing relates to the key functions or management of IORP, the FSMA must be notified before the agreement enters into force. The FSMA must also be notified of any subsequent important developments with respect to any outsourced functions, activities or operational activities.

- The FSMA can request information and documents from the members of operational bodies, key function holders and its external advisors.

8 Entry into force and transitional measures

The New Act enters into force on 13 January 2019.

For IORPs licensed on 13 January 2019, the New Act contains transitional measures:

- The actuary, internal auditor and compliance officer appointed on 13 January 2019 are automatically considered to be responsible for the actuarial, internal audit and compliance functions until the date of their renewal of their appointment or of the appointment of another person responsible for said function, and **up to 31 December 2020 at the latest.** Please note that the FSMA must be informed of the appointment or renewal of these key function holders three months in advance. The IORPs must therefore supply the FSMA with every document and information necessary to assess if the person fulfils the fit and proper requirements. Existing IORPs therefore should check the mandate and the expiry date of their current actuary, internal auditor and compliance officer. If the mandate expires before 31 December 2020, the IORP has to already follow the new procedure of appointment or renewal and inform the FSMA three months in advance of the new appointment or renewal.

- **By 31 December 2019 at the latest**, IORPs must appoint a risk manager(s). Considering the period of three months to obtain approval from the FSMA, it is advisable to propose the risk manager to the FSMA by June 2019, so that there is time left to supplement the file in case of any questions from the FSMA.

- Multi-undertaking IORPs managing pension schemes for various sponsoring undertakings who are not part of the same group of undertakings (see point 1) have to adapt their structure and their voting rights to the requirements of the New Act **by 31 December 2019 at the latest**.

- **By 31 December 2020 at the latest**, IORPs should draft or formally adapt the various documents required by the New Act (e.g., written policies, remuneration policy).

- Notifications of a cross-border activity in another Member State or of an activity in a State that is not a member of the European Economic Area submitted before 13 January 2019 will be treated in accordance with the provisions of the “old” Act on IORPs.

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