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THE IORP II EUROPEAN DIRECTIVE: ANALYSIS AND EVIDENCE OF THE MAIN REGULATORY AND MANAGEMENT INNOVATIONS

Elisabetta D’Apolito, University of Foggia**Giampiero Maci, University of Foggia**

DESCRIPTION

Over the last few years, the pension system has become increasingly important, resulting in growing political attention and consequently an increase in rules and regulations for institutions for occupational retirement provision. The news regulations certainly determine an increasingly important impact in the operation and management of savings destined for private supplementary pensions, which contribute to social sustainability as part of the welfare system. In light of the European demographic context, national budgets and public debt, company and occupational pensions schemes finally certainly represent an important way of integrating national pension systems and social security.

With reference to the European context, on 14 December 2016, the European Parliament and the Council published the new directive (EU) 2016/2341 - repealing the previous one of 2003 n. 417 - on the activities and supervision of Institutions for Occupational Retirement Provision (IORPs) that play a role crucial in payment of retirement benefits for occupational, taking into account the rules and of national traditions. They are therefore socially oriented entities that provide important financial services in the context of the relationship between worker and employer. Specifically, these are entities that should be fully distinct from any sponsoring undertaking or trade association, so that, in the event of the bankruptcy of a sponsoring undertaking, the assets of the IORP are safeguarded in the interest of the members and beneficiaries. Regardless of the legal form, the institution should operate according to the capitalization principle in order to provide retirement benefits in connection with an employment activity and on the basis of an agreement entered into individually or collectively between employer and employee or with self-employed workers, in accordance with the legislation of the home Member State and the host Member State.

The prudential provisions envisaged by the new European legislation are intended primarily to favor a sound, prudent and efficient management of company or occupational pension schemes. In particular, the regulator requires an adequate and transparent organizational structure, with a clear division and an appropriate separation of responsibilities, as well as an effective system to guarantee the correct transmission of information to members and beneficiaries. Furthermore, it is expressly provided that the management model is proportionate to the size, nature and complexity of the entity's activities. According to the new directive, IORPs must be effectively managed by at least two persons. Member states, however, may authorize the management by a single person on the basis of a reasoned assessment of the competent authorities.

New Regulations

With reference to the new regulations, the new directive provides that IORPs then equip themselves three basic functions: a risk management function, internal audit function and, in certain cases, an actuarial function. The holders of the respective functions must communicate the findings and relevant recommendations to the administrative, management or supervisory body of the IORP, which defines the corrective actions to be taken.

Specifically, the risk management function has the fundamental task of adopting the reporting strategies and procedures to identify, monitor and manage the risks, both at an individual and aggregate level, to which IORPs may be exposed. In particular, this system covers the risks that may occur in IORPs or in companies to which their tasks or activities have been outsourced and for which the following areas can be identified: a) underwriting and setting up of reserves; b) asset-liability management; c) investment, in particular derivatives, securitisations and similar commitments; d) liquidity and concentration risk management; e) operational risk management; f) insurance and other risk mitigation techniques; g) environmental, social and governance risks associated with the investment portfolio and related management.

IORPs must also prepare and document an internal risk assessment at least every three years or immediately following any significant change in the risk profile of the IORP or the pension schemes managed by the IORP. This assessment contains a detailed description of how the risk assessment is integrated into the management and decision-making processes of the IORP and its effectiveness within the risk management system.

IORP Functions

The legislation also provides that IORPs must have an effective internal audit function. This function is specifically responsible for verifying the correctness of the operational and management processes and other elements of the system of governance as well as the outsourced activities.

Finally, the actuarial function is mandatory if the IORP guarantees biometric risks, investment returns or a certain level of performance. The duties of this function, defined by the regulations, are: a) coordination and supervision of the calculation of technical provisions¹; b) verification of the adequacy of methodology and underlying models used for the calculation of technical provisions and the assumptions made for this purpose; c) verification of the sufficiency and quality of the data used in the calculation of the technical provisions; d) comparison of the assumptions underlying the calculation of the technical provisions with the data derived from experience; e) verification of the reliability and adequacy of the calculation of the technical provisions; f) express opinions on the global underwriting insurance policy, in the event that the IORP having such a policy; g) express opinions on the adequacy of the insurance agreements in the event that the IORP having such agreements; h) contribute to the implementation of the risk management system.

With reference to the investments rules (Article 19), the directive contains a specific reference to environmental, social and governance (ESG) factors to be assessed in risk management and investment strategies, considering the relevance of these factors as pointed out by the United

¹ “Technical provisions should be calculated on the basis of recognised actuarial methods and certified by an actuary or by another specialist in that field. The maximum interest rates should be chosen prudently according to any relevant national rules. The minimum amount of technical provisions should both be sufficient for benefits already in payment to beneficiaries to continue to be paid and reflect the commitments that arise out of members' accrued pension rights. The actuarial function should be carried out by persons who have knowledge of actuarial and financial mathematics commensurate with the size, nature, scale and complexity of the risks inherent in the activities of the IORP, and who are able to demonstrate their relevant experience with applicable professional qualifications or other standards” (Whereas 40 of the Directive).

Nations. IORPs are also called upon to define and apply a sound remuneration policy for the staff involved in fund management, key functions and professional activities with a significant impact on the institution's risk profile (Article 23). This policy must be proportionate to the size, internal organization, nature and complexity of the activities carried out.

From the reading and analysis of the main regulatory changes, it is certainly evident the will of the legislator to renew and harmonize the rules on supplementary pension schemes in the European context in order to facilitate cross-border activity and the transfer of pension schemes in increasingly complex financial markets and constantly evolving.

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