

# The IORP II Directive, the Second Shareholders' Rights Regulations and the Sustainable Finance Disclosure Regulation – Some ESG Considerations

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# Agenda

The IORP II Directive : Delayed transposition, investment rules and ESG requirements.

The Pensions Authority & the IORP II Directive: Activity to date and guidance.

The Shareholders' Rights Regulations 2020: Purpose and application to pension schemes.

The Sustainable Finance Disclosure Regulation 2021: Background and requirements for Trustees.

# The IORP II Directive - Transposition

Background to delayed transposition in Ireland:

- Judicial review proceedings were initiated in March 2019 by the Association of Pension Trustees of Ireland (APTI).
- Proceedings commenced in October 2019, however APTI requested an adjournment to allow the Minister time to consider the matter.
- It is expected that APTI will seek to recommence proceedings if the proposed transposing regulations do not include an exemption for single member pension schemes.
- The pandemic – further delay to Irish transposing regulations.

# The IORP II Directive – Investment Rules

Article 19 of the IORP II Directive provides that:

- A scheme's assets must be predominantly invested (51%) in regulated markets.
- Borrowing can only be used for liquidity purposes and only on a temporary basis.
- IORPs must invest in accordance with the “prudent person” rule.
- Within the prudent person rule, Member States shall allow IORPs to take into account the potential long-term impact of investment decisions on ESG factors.

# The IORP II Directive – ESG Requirements

EU Member States must ensure that IORPs:

- Operate an effective governance system that provides sound and prudent management of their activities and that specifically includes consideration of ESG factors when making investment decisions.
- Have a risk-management system that covers ESG risks relating to the investment portfolio and the management of it.
- Inform prospective scheme members whether and how the investment approach takes ESG factors into account.

# The IORP II Directive – ESG Requirements

EU Member States must ensure that IORPs:

- At least every three years, carry out an internal risk assessment and set out how the investment policy takes into account ESG factors.
- Produce and review a SIPP at least every three years, or immediately following significant changes to investment policy.
- The SIPP must be made publicly available and explain whether and how the investment policy takes into account ESG factors.

# The Pensions Authority – Trustee Boards

The Pensions Authority focus on trustee boards and KFJs under IORP II:

- Trustee boards should review their own members at least every three years and consider:
  - Ability of individual trustees to devote the necessary time and attention to the role.
  - Possible conflicts of interest of its members and whether these can be managed.
  - The overall balance of experience and expertise.
- It expects trustee boards to have conducted and documented their own due diligence to ensure that a prospective trustee or KFJ is the proper person for the role.

# The Pensions Authority – Activity to Date

The Pensions Authority and the IORP II Directive:

- 2020 engagement programme with defined benefit schemes and master trusts. The objective of the work was to get an understanding of the level of preparedness for IORP II.
- The master trust engagement programme identified a general lack of awareness of the Directive amongst trustees.
- The Pensions Regulator informed the Society of Actuaries in June 2020 about DB scheme categorisations.
- Three separate measures to allow an objective analysis of a DB scheme's ability to pay benefits; solvency, risk and sustainability.



# The Pensions Authority – Activity to Date

The Pensions Authority and the IORP II Directive:

Proposed DB scheme categorisations:

- Category 1 - Those schemes that look likely to be able to meet their obligations.
- Category 2 - Those schemes which the Pensions Authority judges as posing significant risk to member benefits unless scheme practices are changed.
- Category 3 – Schemes that look most unlikely to be able to meet their obligations.

# The Pensions Authority – Activity to Date

The Pensions Authority IORP II Directive Survey Findings:

- Noted a general level of awareness amongst trustees in respect of their responsibilities under the IORP II Directive.
- Overall it was disappointed at the lack of adequate preparation.
- Expressed surprise at the proportion of schemes surveyed that had not appointed KFJs (internal auditors, risk managers, actuaries).

# The Shareholders' Rights Regulations 2020 - Purpose

What do the Regulations do?

- Aim to increase transparency as well as shareholder engagement in corporate governance.
- The Regulations introduce various new chapters into the Companies Act 2014.
- The new Chapter 8B (Transparency of institutional investors, asset managers and proxy advisors) impacts pension schemes.

# The Shareholders' Rights Regulations 2020 – Application to Pension Schemes

The Public Disclosure Requirements in the Regulations:

- For the Regulations to apply it will depend on whether the pension scheme is a “relevant institutional investor”.
- A scheme is a relevant institutional investor where:
  - It is an occupational pension scheme established in Ireland and falling within the scope of the IORP II Directive; and
  - Invests directly, or through an asset manager, in shares traded on an EU regulated market.
- The majority of IORPs will be relevant institutional investors for the purposes of the Regulations.

# The Shareholders' Rights Regulations 2020 – The Public Disclosure Requirement

The Public Disclosure Requirements in the Regulations:

- All relevant institutional investors are required to:
  - Develop and publicly disclose an engagement policy (on the company website).
  - Make certain disclosures in respect of investment strategy.
- The engagement policy must confirm how schemes (or their asset managers) monitor investee companies on:
  - Financial & non-financial performance.
  - Risk.
  - ESG Factors.
  - How the scheme exercises its voting rights.

# The Shareholders' Rights Regulations 2020 – The Public Disclosure Requirement

The Public Disclosure Requirements in the Regulations:

- There is also a “comply or explain” provision that gives relevant institutional investors the option to publicly disclose or provide a clear reasoned explanation as to why they failed to publish.
- Investment strategy disclosure:
  - Main elements of equity investment strategy.
  - Similar to requirements which many trustees are subjected to in respect of their SIPP under the Pensions Act 1990.
  - SIPP should be reviewed to assess if it will need to be revised in any way.

# The Shareholders' Rights Regulations 2020 – Guidance to Date

## Guidance on the Regulations:

- The Pensions Authority had yet to issue guidance on the Regulations.
- EIOPA has suggested that the SIPP might include the engagement policy or the explanation as to why an engagement policy has not been prepared.
- EIOPA also acknowledged an overlap between the requirements of the Regulation and the ESG aspects of the IORP II Directive.
- The institutional investor aspect of the Directive has been implemented in a direct manner in the UK and many schemes have implemented the necessary disclosure via sponsoring employer websites.

# The Sustainable Finance Disclosure Regulation - Background

- Effective 10 March 2021
- Central Bank of Ireland to regulate compliance
- Covers Financial Market Participants
  - Pension Schemes
  - Asset Managers
  - Advisors
- Public Disclosure



# The Sustainable Finance Disclosure Regulation – Requirements for Trustees

- The key requirements for pension schemes will be to publish on websites:
  1. Investment Policies on how sustainability risks are factored into decision making
  2. Entity Level Impact
  3. Remuneration Policy
  4. Member Disclosure
  5. Additional Disclosures for ESG Products

# In Summary – Take Away Points

Guidance on the Regulations:

	IORP II	SRD II	SFDR
Effective Date	TBC	30 March 2020	10 March 2021
Regulator	Pensions Authority	Office of Director for Corporate Enforcement	Central Bank of Ireland

- Receive appropriate training on responsible investment and the regulatory requirements
- Consider putting in place an ESG policy for your scheme.
- Review SIPP and governance aspects of ESG policy for the purposes of compliance with the different regulations
- Give consideration as to how Trustees plan to meet the disclosure requirements under SFDR
- Gap analyses to ensure all regulatory requirements are satisfied



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