



***PensionsEurope's answer on the EIOPA 's
consultation for the CfA on the IORP II***

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General comments

PensionsEurope advocates adequate and secure pensions for all European citizens. We are confident that IORPs can and should play a significant part in providing this. Therefore, we support and promote good and appropriate IORP legislation at the European level that respects and considers the many different facts and views that are provided at the national level in the best way possible. This means that we, as a European organization and in the best interests of European citizens, ask EIOPA to carefully consider the responses from our national members to this consultation to provide advice to the European Commission in a way that protects all of the various occupational pension systems.

IORP II Directive is rightly minimum harmonization legislation and this needs to continue. To be highly compliant with the principles of subsidiarity and proportionality, there should continue to be no provisions for delegated acts. We are pleased to see that EIOPA has the same opinion concerning the delegated acts.

In a few instances, such as the topic of the shift from DB to DC, we see a disconnect between the analysis and the proposals in this consultation. Additionally, EIOPA occasionally tends to suggest broad changes for all IORPs to address very specific potential issues, as in the case of multi-sponsor IORP providers (MIPs).

The IORP landscape across Europe is very diverse, not just between countries but also within them. This diversity is largely derived from and intricately linked to national labor, tax law and social requirements as well as individual countries' social security systems. Because occupational pension systems, of which IORPs are a part and their integration with State pension provision, differ greatly from one country to the next, so do their functions and organizational structures. Due to the occupational nature of IORPs, national social and labor laws and national social partners at the company, industry, and higher levels have set up very different IORP types and IORP activities across Europe. This diversity must be fully respected by European IORP legislation, and it is imperative that none of these national occupational pension systems may be harmed.

We acknowledge the importance and urgency of sustainable transition, diversity, and inclusion. There is a long tradition of pension funds aligning their investment practices with both the values of their members and beneficiaries and the needs of society at large. As a result, pension funds are increasing the level of ambition of their responsible investment policies and the diversity of their management bodies to improve decision-making processes.

The implementation of the IORP II directive implied a huge cost increase, especially for small and mid-sized IORPs resulting in a decrease in the number of IORPs in some member states. Therefore, due consideration should be given to the cost increase of the proposed changes to IORP II, not only for each change but also on an aggregate basis of all proposed changes.

Chapter 2. Governance and prudential standards

Q2.1: Does the IORP II Directive in your view achieve a proportionate application of prudential regulation and supervision to IORPs? YES/NO-

Proportionality in the IORP directive poses several difficulties, such as:

- Frequently, proportionality is applied by supervisors just by only focusing on IORP size. Other characteristics such as the nature, scope, and complexity of their operations can be ignored in many cases.
- How IORP-specific legislation has been implemented and how NCAs have overseen them has not always been balanced. IORP II defines proportionality at an EU level and therefore one can envisage that in some member states proportionality should apply to all of its IORPs.
- IORP directive does not consider adequately the collective agreement model of some countries. In those systems, the social partners, or their joint representatives, have their independent role in the administration of occupational pensions. They function as an independent link between employers, employees and the IORP. A consequence of this is that the IORP II Directive, designed for a triangular relationship (employers, employees and the IORP), is at times difficult to apply.

The role of the social partners and other specificities of Member States should be more adequately respected and reflected in proportionate application of the directive.

The revision of the IORP II directive needs to consider proportionality. We believe that the directive could be a basis for better defining proportionality in relation to the application of various and increasing EU horizontal legislation applicable to IORPs, such as DORA, SFDR, etc. IORPs are pension institutions with a social purpose that provide retirement benefits and form part of the national pension system within the respective multi-pillar framework of a Member State. This role needs to be properly recognized. The inclusion of IORPs in the aforementioned kind of directly applicable regulation should be conditional to a positive impact assessment and otherwise relevant regulation for IORPs should be adapted on a principles-based approach and implemented at the national level by the Member States.

Q2.2: Should in your view the threshold for the small IORP exemption of 100 members be increased? YES/NO-

EU legislation needs to respect the principles of subsidiarity and proportionality and provide adequate flexibility for Member States and IORPs. PensionsEurope recognizes that the current threshold can be considered to be relatively low. In some Member States, this threshold has not been implemented into national legislation making all IORPs in that Member State subject to IORP II. According to a previous estimate by EIOPA (included on page 33 of the Consultation Paper), IORPs under the new threshold would account for 30% to 45% of all IORPs (representing less than 1% of AUM by IORPs in Europe). On the one hand, some of PensionsEurope's members do not believe that excluding nearly half of the IORPs from the scope of European legislation would be appropriate as it could put in question the legitimacy and added value of the Directive. On the other hand, some of PensionsEurope's members have the view that the implementation of IORP II entailed a significant financial burden for IORPs, which has frequently led to a reduction in benefits for members and beneficiaries. The greatest threat to survival of small IORPs is the cost burden. In some Member States, the number of IORPs has already dropped by 25% since the introduction of IORP II. From this

perspective, the proposed new threshold of 1000 members/beneficiaries and EUR 50 million in assets would be an improvement.

Q2.3: Do you agree with the draft advice to restrict the proportionality formulations throughout the IORP II Directive to 'proportionate to the nature, scale and complexity of the (risks inherent in the) activities of the IORP', i.e. removing the 'size' and 'internal organization' criteria? YES/NO

NO. We disagree with the proposed restriction. Size and internal structure requirements can be very important for the proportionate application of the directive. It is crucial to have objective and easy to implement criteria. It is important for us that especially the criterion "internal organization" is maintained. Therefore, we support the current proportionality principle in the IORP II Directive "proportionate to their size and internal organization, as well as to the size, nature, scale and complexity".

Less flexibility in implementation for NCAs and IORPs would result in the removal of the "size" and "internal organization" criteria. We think that the participants will also benefit from the size proportion. It is true that from the participants' perspective, the size of the risk is mainly defined by their capital or entitlements accrued, not the total assets under management. The price of enacting legislation may be somewhat higher for larger IORPs, but it is most definitely not proportional to AUM.

Q2.4: Do you support option 1 in sub-section 'Low-risk profile IORPs subject to proportionality measures' of section 2.3.5 of defining a category of low-risk profile IORPs in the IORP II Directive and allowing Member States to exempt such IORPs from certain minimum standards in the IORP II Directive? YES/NO

-Which minimum standards in the IORP II Directive should in your view be considered for the possible exemptions or should be applied in a less onerous way?

NO. The governance structure and burden of supervision can be tailored to the size. Otherwise, smaller IORP participants would bear a disproportionate share of the costs. The suggested method would also imply that applying proportionality measures to any other "non-low-risk profile IORPs" could no longer be possible. PensionsEurope generally supports the idea of creating additional criteria by which Member States may choose to implement proportionality measures, as in practice, many MSs have used size alone as a criterion. Any revision of the IORP II Directive should not lead to more provisions based on EU minimum harmonization criteria.

Q2.5: The analysis of options in sub-section 'Low-risk profile IORPs subject to proportionality measures' of section 2.3.5 proposes four conditions for IORPs to qualify as 'low-risk profile IORPs', in line with the conditions proposed by EIOPA for life insurers to qualify as 'low-risk profile insurance undertakings'. Do you have comments on the four proposed conditions or suggestions for other conditions? YES/NO

Yes. Member States currently decide on proportionality in very different ways.

The risk profile of an IORP cannot be reduced to a value-at-risk calculation. Adequate regulation and supervision for IORPs and the subsequent application of proportionality depend on many other aspects including:

- The type of plan (DB plans, hybrid plans, DC plans with protection mechanisms, DC plans without protection mechanisms,)
- Affiliation (compulsory, auto-enrolment, voluntary)

- Plan Design (social and labor law requirements, based on collective agreements, designed by the sponsor, designed by the IORP)
- Sponsor (single sponsor, multiple sponsors with economic ties, multiple sponsors without economic ties, no sponsor)
- Investments (passive management, active management, internal asset management, external asset management, use of unlisted assets)
- Investment risk (remains with the sponsor, downside risk remains with the sponsor, downside risk remains with the IORP, investment risk is with the IORP, investment risk borne by the member)
- IORP governance structure (social partners on the board, extension of outsourcing and party providers, cross border IORPs)

Non-traditional asset classes may or may not be excluded from investment policies that aim to reduce risk. Excluding alternative asset classes may not necessarily result in lower-risk investment policies.

Q2.6: The analysis of option 2 and 3 in sub-section 'Low-risk profile IORPs subject to proportionality measures' of section 2.3.5 proposes proportionality measures relating to the IORP II governance standards that low-risk profile IORPs would be allowed to use. Do you have comments on the proposed proportionality measures or suggestions for other proportionality measures to be used by low-risk profile IORPs? YES/NO

NO. Administering an IORP can be difficult and lead to conflicts of interest. We agree with the NCA's opinion and are against option 2. We oppose the idea of establishing a category of "low-risk profile IORPs. We reiterate that we are generally in favour of the EU's minimum harmonisation approach. The nature and extent of the rules and requirements should depend less on the risk and more on other criteria, like for example the set-up of the IORP etc.

Q2.7: The IORP II Directive takes a minimum harmonisation approach, laying down minimum governance and prudential standards. If the concept of low-risk profile IORPs was to be introduced in the IORP II Directive, should institutions that are not low-risk profile IORPs be subjected to standards exceeding the current minimum, as proposed in the analysis of option 3 in sub-section 'Low-risk profile IORPs subject to proportionality measures' of section 2.3.5? YES/NO

NO. PensionsEurope believes that IORP II should remain a minimum harmonisation directive. Higher standards for IORPs should not be imposed through the IORP directive. There is no justification for raising the present level of EU standards for any IORPs with specific risk profiles. The IORP II Directive already contains the necessary safeguards for members and beneficiaries. If Member States and NCAs are convinced that higher standards are needed in their market (e.g. for the biggest IORPs) they already have the possibility to introduce those.

Q2.8: Do you have any other suggestions to ensure a proportionate application of the requirements in the IORP II Directive? YES/NO

YES. Firstly, paying more attention to the aims behind requirements may open possibilities for proportionality.

Secondly, the risk profile of an IORP cannot be reduced to a value-at-risk calculation alone. The expert judgement of the NCA should be key in determining which IORPs could be exempt from certain minimum standards.

Finally, the NCAs frequently interpret EIOPAs Opinion as binding EIOPA Guidelines. This leads to expensive and complicated regulations that are not aligned with the pension system of the member state and result in excessive costs.

Q2.9: Should in your view explicit requirements be introduced in the own-risk assessment (ORA) and the supervisory review process (SRP) on liquidity risk assessments for IORPs with material derivative exposures? YES/NO

We agree with EIOPA's focus on the liquidity risks that IORPs may experience under stress conditions if they use derivatives. The consequences of the margin rules in serious financial market stress situations can be severe. The risk-management system shall already cover (in a proportionate way and "where applicable") the liquidity risk management (Article 25(2)). Liquidity risks must already be considered when performing the ORA. The only difference to the proposed amendment to the directive is that under current legislation, it is not stipulated in which manner this must be done. We acknowledge the issue's significance in the present context. It makes sense that supervisors are required by law to oversee these procedures and that liquidity management must be integrated into pension funds' risk-management processes. Therefore, any potential amendments to IORP II should follow a principle-based approach, leaving the implementation up to the national level.

Q2.10: Do you agree that in some situation's conflicts of interest between IORPs and service providers can give rise to specific risks which justify requirements on the management of conflicts of interest with the service provider connect to the IORP? YES/NO

YES. The draft legislative proposals are broader than the problems mentioned in paragraph 2.5 of the Consultation Paper. As a result, there appears to be a gap between the issues mentioned and the specific recommendations made. Only a small portion of pension service providers could be affected by the EIOPA-identified problem. The very few sentences EIOPA uses on page 52 to explain its broad proposals appear to be based solely on the suspicion that conflicts of interest might occur, without any analysis of actual problems. Moreover, based on those assumptions by EIOPA, there are general proposals which unnecessarily would apply to the whole sector.

We agree that there may occasionally be reasons for EIOPA and NCAs to be concerned. However, the definition of "service provider," articles 21-6, and article 31 as they are currently written in the Consultation Document are too vague.

Additionally, we would like to emphasize that national legislators may be in a better position to adopt any additional measures that specifically address the risks highlighted by EIOPA proportionately and efficiently.

Q2.11: Do you agree that the conditions of operation for IORPs should be strengthened to ensure the proper functioning of the internal market and protect adequately the rights of EU members and beneficiaries from potential conflict of interest between IORPs and service providers? YES/NO

NO. In some Member States IORPs can manage occupational schemes of employers who are not related in any way. We believe that in countries where the social partners have created these systems, they have high standards for the protection of members and beneficiaries as well as the quality of future pensions when choosing eligible providers. The fact that the employers are unrelated does not pose any additional risks to members or beneficiaries of these IORPs because they are governed in the

same way as other IORPs. In fact, with this kind of organisation, the members and beneficiaries can benefit from effective economies of scale.

Regarding the proposed changes to the directive, notifying the supervisor of changes to the business plan is not necessary. For the first few years after operations have begun, the supervisor may find this information useful. However, following that, the ORA and regular supervisory reporting should be adequate for supervisory purposes.

The Consultation Paper states in paragraph 2.5.2 that approximately 12% of cross-border IORPs do not manage domestic occupational pensions in the home Member State from which they operate. When the national supervisors for a given IORP identify risks to members and beneficiaries, they should work together and exercise their supervisory authority to address those risks. Given the small amount of cross-border activity, this does not suggest a serious issue that requires immediate regulation.

Q2.12: What are your views on introducing an explicit provision in Article 50 empowering supervisors to collect quantitative information from IORPs on a regular basis? Please explain your answer.

NCA's can already request the information they require from IORPs under the provisions of Art. 50 IORP II. However, we want to ensure that costs for reporting to supervisors do not exceed a certain level. So that the reporting costs can be justified, supervisors should have a clearly defined and communicated purpose for gathering data.

We believe that the Directive's recital could state that NCA's and EIOPA should be cautious when gathering data with an explicit aim of reducing reporting costs for IORPs. We are generally against the introduction of technical standards into the IORP Directive because of the importance of NCA's, the heterogeneity of pension systems and the requirement for minimum harmonization. We appreciate that EIOPA does not advise implementing this policy option.

Q2.13: Do you have suggestions to resolve the double reporting burden in some Member States, i.e. one template for the purpose of national supervision and one for the purpose of reporting to EIOPA? YES/NO

NO. We believe that keeping the national supervisor in charge of deciding what needs to be reported is the best way to prevent double reporting. EIOPA and NCA's frequently demand the same basic content with a very different breakdown, putting a significant additional burden on IORPs. Only when EIOPA's data needs exceed those data already provided to the NCA, should it be required to submit additional data to EIOPA through the NCA's. This strategy could relieve the IORP of the burden of communicating the same data several times in different formats.

Q2.14: What are your views on reiterating in the draft advice EIOPA's opinion to the EU institutions on a common framework for risk assessment and transparency, considering that the draft advice does not advise any change to the IORP II Directive in this area?

We agree with EIOPA that no harmonised solvency rules should be introduced.

We advise EIOPA to abstain from reiterating its advice as of April 2016 that a common framework for risk assessment and transparency should be introduced. Calculating the Common Balance Sheet (CBS) and the standardised risk assessment and reporting to the national supervisory authorities and the

participants on an annual basis would increase the tension on standards and required information between national supervisors and EIOPA.

Moreover, supervisory powers should not be added to such a common framework. This applies to direct supervisory powers and measures as well as to indirect supervisory mechanisms. Due to the need for legal certainty, intrusive supervisory action should not be possible if an IORP complies with regulatory requirements. Adding supervisory powers to the common risk framework would in practice be equivalent to introducing harmonised capital requirements, since IORP's would need to be sure to have capital beyond that identified because of the risk assessment.

The CBS, for which EIOPA developed detailed specifications in 2019, is inadequate for DB and especially inadequate for DC IORPs. Since the EU IORP sector is moving from DB to DC (see Chapter 5), the common framework will become even more inadequate. In the 2022 EIOPA IORP stress test, the DC schemes used the CBS methodology for the first time, and they found it time-consuming (and more time-consuming than what the application of cash-flow analysis would have been). In particular, the application of the CBS was not meant for pure DC IORPs, as it does not fit with such schemes for which liabilities fit the assets in place.

All in all, we would like to stress that the CBS is not an appropriate instrument to cover the wide range of diversity of IORPs in Europe as it has many shortcomings. By way of examples, the CBS (i) is too complex, (ii) market consistent valuations in the CBS are unreliable and too dependent on arbitrary assumptions and approximations/simplifications, (iii) contains the misconception that option values (e.g. of benefit reductions) should be considered as expected values, and its execution is too expensive. Contrary to the cash-flow analysis, the CBS looks only at (an approximation of) market values and does not consider future developments indicating the likelihood, timing, and severity of events. See for more detail on our previous responses and papers:

- [PensionsEurope AEIP Position Paper on EIOPA 2022 IORP Stress Test](#)
- [PensionsEurope Position Paper on EIOPA 2019 IORP Stress Test](#)
- [PensionsEurope Position Paper on appropriate IORP stress testing methodology and EIOPA IORP Stress Test 2017](#)
- [PensionsEurope Position Paper on EIOPA IORP Stress Test 2015](#)
- [PensionsEurope Position Paper on EIOPA IORP Quantitative Assessment 2015 and EIOPA opinion for Risk Assessment and Transparency for IORPs](#)

On a side note, on page 36 there is a reference to the IORP II Directive on low-risk profile IORPs for which the IORP II Directive allows the Member States to provide an exemption from certain minimum standards of the Directive, and we note that also in that context EIOPA has made a reference to the standardised risk assessment: IORPs are considered to be low-risk profile IORPs if they operate pension schemes which provide cover against biometric risk, or guarantee a given investment performance or a given level of benefits, the gross value at risk for interest rate risk calculated as part of the standardised risk assessment is not higher than 5% of technical provisions (and if also other conditions are met). If and when a standardised risk assessment would be used to decide if an IORP is "low risk", we would like to advocate using a different methodology than the common framework (i.e. the CBS).

Finally, in section 5.5 EIOPA states that it strives for more convergence regarding 'long-term risk assessments' (p. 152): 'The objective of the Opinion on long-term DC risk assessment is to enhance supervisory convergence in the supervision of risk management by IORPs providing DC schemes, in

particular concerning long-term risk assessment from the perspective of members and beneficiaries, to foster the protection of members and beneficiaries and improve the functioning of the internal market'.

It seems to us that EIOPA is considering mixing suggestions from the old DB world (common framework, section 2.7) and the new DC world (long-term risk assessment using pension projections, 5.5.1), and therefore, we would like to invite EIOPA to clarify:

- The remark 'The long-term risk assessment using pension projections...' (p. 153) and its potential implication that pension projections will become one of the main instruments for EIOPA's toolbox for EIOPAs risk assessments (also future stress tests) and that the common framework will be abandoned
- The suggestions in section 5.5.1 relate to section 2.7 where it is stated that EIOPA is considering 'reiterating in the draft advice EIOPA's opinion to the EU institutions on a common framework for risk assessment and transparency'.

Q2.15: Should the definition of sponsoring undertaking in Article 6(3) be expanded to include professional associations? YES/NO

YES. PensionsEurope supports Option 1 to include not only employers but also professional associations in the definition of sponsoring undertaking. However, just because employers' and employees' associations (social partners) agree on and in that capacity "offer" pensions schemes, that cannot lead to them being considered sponsoring undertakings. In our opinion, the proposed wording for the new definition could be interpreted in a way that is not intended.

Q2.16: Should the definition of regulated market in Article 6(14) be expanded to include equivalent markets in third countries? YES/NO

YES. We are in favour of broadening the definition to encompass organised trading facilities, multilateral trading facilities, and comparable third-country markets. IORPs already make significant investments in third countries, which is advantageous in terms of diversification. Additionally, our members would like to have access to the various kinds of regulated markets and trading platforms. According to the consultation paper, this amendment to the directive would have no discernible drawbacks and provide IORPs and supervisors with legal certainty and consistency.

Q2.17: Should multilateral trading facilities (MTFs) and organised trading facilities (OTFs) be specified in Article 19(d) in order to ensure the same treatment as regulated markets? YES/NO

YES. According to the consultation paper, this amendment to the directive would have no noticeable drawbacks and provide IORPs and supervisors with legal certainty and consistency. Therefore, PensionsEurope is supportive of the idea.

Q2.18: Should the requirement to have an ORA policy, including a specification of its main components, be introduced in the IORP II Directive? YES/NO

NO. It is appropriate for an IORP to have documented processes and procedures for the ORA. Each IORP should however be free to choose the organisational structure that best fits its internal structure and risk profile. If regulation is deemed necessary, it ought to be left up to the Member States and NCAs so that the requirements can be tailored to various national types of IORPs. Many MSs and NCAs have already put this requirement in place. The benefits of implementing such additional EU requirements seem uncertain as the own risk assessment is already defined in the IORP II directive, whereas an additional policy document causes an additional burden.

Q2.19: Should a provision be introduced in the ORA that the risk assessment should take into account the risk tolerance limits approved by the IORP's management or supervisory body? YES/NO
NO. The current IORP II requirements are sufficient and appropriate. We object to the IORP II requirements being further developed. Many MSs already have this provision in place at the national level. The potential next step from EIOPA might be to measure and quantify the market risk of the IORP in a way that is consistent with the market to allow comparison to its risk tolerance cap. We reject this idea. PensionsEurope believes that the IORP Directive should apply minimum harmonization, national risk measures should be used, and risk measures should not be (directly) prescribed in the IORP directive.

Do you have any other comments on the following sections in chapter 2:

We would like to address the following points:

- We wonder if the IORP II Directive could provide more clarity about the obligation of IORPs to maintain regulatory own funds in case their members and beneficiaries fully carry biometric risks themselves (as collectivity), rather than the IORP itself.

In this respect we first note differences in wording between Article 13 ('provide cover against biometric risks') and Article 15, par. 1 ('underwrites the liability to cover against biometric risk'). And more specifically we would like to point to the current pension reform in the Netherlands, after which IORPs will be providing annuities. These annuities are variable and depend on financial and biometric results, and the IORP neither provides guarantees nor -in our opinion- underwrites the liability to cover against biometric risks. PensionsEurope is satisfied with the current interpretation in other Member States and the clarification should not lead to additional regulatory own funds requirements. Therefore, PensionsEurope requests further clarification in a revised IORP II Directive - either in Article 15 itself or in a recital - whether and when in these situations IORPs are considered to underwrite the liability to cover against biometric risks as prescribed in Article 15, par. 1 and, as a result, will be obliged to maintain regulatory own funds.

- On Article 19.3: IORPs should be allowed to act as a guarantor on behalf of subsidiaries and for clearing purposes. It can be to the benefit of the IORP if it can guarantee e.g., a subsidiary's real estate investments. This is necessary for IORPs to be able to own investments indirectly through wholly owned subsidiaries or other entities such as partly owned companies acquired in connection with e.g., joint ventures investments. For example, if an IORP enters into a joint venture with other investors to purchase a real estate or infrastructure asset, a more and more important asset class for larger IORPs, it is customary that the seller of such asset or a financing bank will require the IORP and the other investors to guarantee certain obligations of the joint venture since the joint venture would often be a newly formed vehicle fully dependent on receiving future funding by its owners. Another example is where an IORP owns a real estate asset through a subsidiary and the IORP is required to provide a guarantee for the subsidiary to be able to engage a construction company for a construction project on the real estate.
- Two suggestions for investment rules:
 - According to Art 19 (1), lit g IORP II "investment in the sponsoring undertaking shall be no more than 5 % of the portfolio as a whole and, when the sponsoring undertaking belongs to a group, investment in the undertakings belonging to the same group as the sponsoring undertaking shall not be more than 10 % of the portfolio." This provision causes operational problems and inefficiencies for the IORP if a bank that, is a custodian bank for

the IORP, wants to implement a pension scheme for its employees with this same IORP. There should be an amendment to Article 19 para 1 (g) to enable custodian banks to have a pension scheme with an IORP while being and acting as a custodian/depository bank for this pension fund at the same time.

- Concerning section 2.8.2 (Investment rules relating to markets), we would suggest a further change:

Art.19(1)(d) requests that “the assets shall be predominantly invested on regulated markets (MTFs or OTFs)”. This provision contains a quantitative requirement which can be interpreted as meaning that investments outside regulated markets [MTFs or OTFs] must remain below 50 % of all investments. We believe that even if the definition of regulated markets will be expanded to third countries, this quantitative limitation might be in contradiction to the prudent person rule under certain special circumstances.

The second sentence of Art 19(1)(d) states that “Investment in assets which are not admitted to trading on a regulated financial market, MTFs or OTFs must in any event be kept to a prudent level. In our view, the quantitative limitation of the first sentence is not necessary given the second sentence and in conjunction with the principle of prudence. Moreover, it may contradict the general principle of prudence in certain special cases and should therefore be deleted from the text. In our view, the second sentence is sufficient and ensures prudent investment in all circumstances only without the first sentence.

Chapter 3. Cross-border activities and transfers

Q3.1: Do you think the issue of potential regulatory arbitrage regarding the registration/authorisation process could be addressed based on the draft advice?

There are other reasons for IORPs than regulatory arbitrage for carrying out cross-border activities, e.g. that a sponsoring company has employees abroad who should also get occupational pensions. The main motivations for multinational sponsoring companies to engage in cross-border activities are to improve the effectiveness of their occupational pension provisions in various countries by bundling them into a single IORP, such as by streamlining governance, boosting operational efficiency, or pooling assets and liabilities.

If the national supervisors (home and host), for a specific IORP, find risks to members and beneficiaries they should cooperate and use their supervisory powers to remedy such risks. Given the limited cross-border activity, this situation does not indicate a major problem that needs to be regulated at EU level for the time being.

Q3.2: What are your views on the policy options presented to address the issue of defining majority of members and beneficiaries needed for approval of a cross-border transfer?

Firstly, we think that the lack of development of cross-border IORP activity is largely unrelated to the existence of supermajorities. The main difficulty is that it is still necessary to abide by the host country's social, labor, and tax laws. On the issue of majorities, we read (on p. 92) that in several Member States, a majority of members need to approve cross-border transfers, instead of (as in other Member States) a majority of members who have responded to the request. PensionsEurope is, irrespective of the Options suggested by EIOPA, in favor of relating the approval to the majority of

votes cast. A majority of votes cast higher than 50% may de facto be easier to meet than a majority of 50% of all members.

Concerning collective systems, we generally do not think that conducting queries among individual members is always a sensible approach. In some Member States, the approval of a cross-border transfer could be given by the relevant administrative bodies in which the IORP's operators, such as social partners, are represented.

Additionally, we believe that the definitions of majorities required for domestic transfers should be governed by the national laws of the Member States rather than being decided at the European level. The lack of cross-border transfers is unlikely to be due to differences in the majority requirements for national versus cross-border transfers, except in theory.

Q3.3: What are your views on the need and options to develop an internal market for cross-border IORPs?

There are limitations to the potential benefits of the internal market for IORPs, due to the continued existence of diverging national social, labor and tax laws. In general, EIOPA advises that the European Commission "should explore frameworks beyond the IORP II Directive that may offer more potential to grow the internal market". In our opinion, the European Pillar of Social Rights principle 15 deserves special attention. Member States, and in particular those Member States and markets where there is insufficient access to sound pension systems, have a clear responsibility to provide the means to achieve the goals stated in principle 15.

We would like to stress that any efforts to facilitate and/or promote cross-border activities may in no way negatively affect non-cross-border IORPs – which account for over 99% of all IORPs and also for over 99% of all assets under management – and their members' and beneficiaries' trust in their pension schemes.

Furthermore, EIOPA recommends "...a simplified procedure for pure DC-schemes in case of non-material amendments of a previously notified cross-border activity..., and a simplified procedure for the expansion of previously notified cross-border activity with only one harmonized DC plan for all sponsoring companies" in P. 98, 3.8.3. PensionsEurope agrees with this.

In paragraph 3.9.2 of its report on supervisory cooperation, EIOPA notes that NCAs have not agreed on what constitutes cross-border activity and transfers and that the IORP II Directive will not need to be amended to address this issue. PensionsEurope concurs with EIOPA on this point.

Finally, PensionsEurope supports EIOPA's Advice 3.9.3, which urges that the "current cooperative environment be further developed and enhanced, particularly through the BoS decision on the collaboration of NCA's."

It has to be pointed out, that multinational sponsoring companies may have a legitimate interest in either expanding their existing cross-border IORPs and to (further) augmenting the efficiency of their management and consolidating their pension arrangements. Analyses of enhancing cross-border activities with this particular stakeholder group in mind are very much welcome.

Do you have any other comments on the following sections in chapter 3?

Chapter 4. Information to members and beneficiaries and other business conduct Requirements

Q4.1: Where a template for the pension benefit statement has been introduced already at Member State level, to what extent do you think this has led to improvements? Please explain your answer in terms of what has worked well and what has worked less well.

As far as templates are concerned, the creation of these documents is very complex and expensive. In the second pillar, where members often do not have choices between different pension schemes, there is no need for a standard template. Most templates require too many details and are not easy to understand (e.g. SFDR templates). Even on the Member State level, there are many differences between the second pillar pension models. Templates are not suitable to provide all the details understandably. The existing provisions of IORP II already provide an adequate level of clarity and comprehensibility of the PBS and at the same time enable IORPs to adequately consider the national specificities but especially the features of the scheme itself and the background of the industry.

One of the main objectives of the IORP Directive 2016 review was to improve the provision of information. The PBS was a best practice in pension communication when it was incorporated into EU legislation. By bringing coherence in definitions, retirement savings could be aggregated. And by bringing uniformity in how those data were presented brought a degree of comparability between pension schemes. As a result, it provided the opportunity to get an overview of retirement income, enhancing pension adequacy and simplifying retirement planning.

According to EIOPA, the goal of the PBS is to provide an overview of retirement income provided by IORPs in order to improve the adequacy of savings. Pension Tracking Services have been developed in some Member States and they fulfil a similar function. Moreover, PTSs aggregate pension benefits from different IORPs and pension pillars. They, therefore, promote comparability between pension benefits. And they are designed with the aim of comprehensibility, presenting only key information as a first layer. PensionsEurope believes that enough flexibility should be given to the MS to choose between PBSs and PTSs. We note that Recital 63 already states that Member States can choose the information to be provided through pension tracking services. The state of play with regards to the PBS is very different in Member States. In some the PTS fulfils the goals of the PBS better than the PBS, effectively making the PBS redundant. In others, IORPs are considering making the PBSs available exclusively through the PTS.

In general, PensionsEurope believes that many differences in terms of structure and layout between the pension benefit statements from different providers do not necessarily hinder an adequate understanding of the mandatory contents of these documents. It should be recognized that the most expensive change to implement is one that changes the format and content of the Pension Benefit Statement (PBS). Furthermore, a pension benefit statement's characteristic that might affect its design and layout go beyond the distinction between DB and DC. Depending on whether they are covered or not, coverage of biometric risks such as disability or death also affects the contents and layout of a pension benefit statement.

PensionsEurope promotes an approach to the PBS that reflects the diversity between Member States. According to the principles of minimum harmonization and subsidiarity, Member States should be able to determine their own pace and direction of change. That is especially important considering the high operational costs of change, that are often borne by members and beneficiaries.

Overall, we support the idea that there should be more freedom for IORPs to layer and target information. IORPs should be able to decide how to share information as they know best what information needs to be shared and communicated to their members and beneficiaries. We think prescriptive communication regulations ought to be eliminated. That way, the PBS would better fulfil the member's preferences, needs and characteristics.

Q4.2: Do you agree to introduce summary information in the pension benefit statement relating to any sustainable investments? Please explain.

Members and beneficiaries should have access to, and be able to easily find, information on sustainability. However, there is no need to include summary information in the PBS.

Regarding the aspect of sustainability, disclosure of how the investment policy takes into account environmental, social, and governance factors is already required under Article 30 of the IORP II Directive. The statement must be made available to the public. Further information on where and how ESG data can be found, if applicable, must be part of the Pension Benefits Statement according to Article 40. These obligations have preceded the newer disclosure requirements from SFDR.

We think that members and beneficiaries of IORPs should have access to, and be able to easily find, information on sustainability. It does however not fall within the goal of the PBS, which is to provide an overview of retirement income provided by IORPs to improve the adequacy of savings. We agree with PBS's objective as stated by EIOPA in 2018. To effectively communicate with IORPs members and beneficiaries, it is important to take into account their preferences, needs, and personality traits but also their cognitive abilities. Insights from behavioral and communication research should guide effective communication. According to behavioral research, communication should only be used to accomplish one goal to be effective. As a result, the PBS should strictly contain only the information required to accomplish its objective to provide an overview of retirement income.

Also, in our opinion, PBS should not be overrun with general information for which European legislators have already come up with sufficient solutions (website publication). PensionsEurope is supportive of option 0 (no change). Option 1 (Inclusion of summary information in the PBS on sustainability issues) correctly assumes additional costs resulting from adding summary information on sustainability. We believe that the added value or benefits for members and beneficiaries would not be sufficient to offset these costs.

Q4.3: What other improvements do you consider could be made to the pension benefit statement? Please explain your suggestions.

EIOPA suggests in this consultation that the PBS be significantly lengthened by including more information points. Making the PBS longer goes against the EIOPA-stated PBS design goals of keeping it brief and to the point. The PBS should, according to EIOPA, ideally not be longer than two pages, which is already challenging to accomplish.

We do not think it would add value to a PBS to include information about investment results and returns, especially in the context of DB systems or, more generally, when members do not have the opportunity to take investment decisions. But also, the proposed amendments and new requirements in the consultation paper would be practically hard to fulfil and increase the length and complexity of pension benefit statements. We believe that information should be distributed primarily at the individual level rather than the fund level.

We could see the value in presenting a cyclical summary of changes in investment returns, premiums, and costs. The information about how investment returns impact personal pension benefits makes it more understandable and enables members to make decisions based on their unique circumstances.

Q4.4 Overall, what are your views on the extent to which the current pension benefit statement has delivered on its objectives (e.g. clear and comprehensive as well as relevant and appropriate information)?

We believe that PBS in Member States where there were no such statements before has been successful in establishing uniform standards, which in some MS facilitated the growth of pension tracking services. On the contrary, its guidelines for communication's form, content, and timing are too rigid. Notably, the requirement of a durable medium is not well-suited to the use of behavioral purposes and new communication tools.

Instead of new requirements for an IORP's pension benefit statement, future added value for recipients is more likely to be provided by national pension tracking systems and the context they provide. Developed pension tracking systems, in our opinion, can provide better aggregation, comparability, and comprehensibility.

We believe that the PBS is already too long and that the content is not immediately understandable. We regret that these issues are not covered by EIOPA. Rather, it advises adding more information to the PBS. Even though we believe that most of that information may be pertinent to members and beneficiaries, it does not address their most pressing questions and does not align with PBS's objectives. Other formats can be used more effectively to distribute this information.

We, therefore, favor option 0 (no change) over the other policy options. To further clarify, we categorically exclude any act of level-II regulation from the other options because the IORP II Directive only seeks to achieve minimum harmonization. As part of the European Tracking Service, significant contributions are currently being made to comparability and common standards across the EU. Consequently, we do not think a revised IORP II Directive needs to include any additional sectoral requirements.

Q4.5: Are there other aspects that you think EIOPA should consider in order to facilitate or leverage digitalisation? If yes, please explain these other aspects.

As communication methods change from letters to emails to a variety of channels, it is now possible to present information in a way that is more comprehensible and enlightening. Therefore, we agree with EIOPA when it says that digitalization presents a chance for improved pension communication. We agree with EIOPA that IORPs now have new opportunities to connect with their members and beneficiaries through digital support because of digitalization.

We respect EIOPA's decision to take an open-minded stance and provide members and beneficiaries with a variety of communication options. However, the administrative costs that result are significant and should be considered. We would be reluctant to codify communication channels and formats because new ones might emerge. In a digital future, the PBS as an individual document (be it on paper or in electronic form) can very well be questioned. We think requirements in IORP-II articles 36 and 38 to make information available in a 'durable medium' impede the provision of layered information. In our view, layering refers to linking to information provided in a separate document or webpage." Considering the speed of change in the field of communications technology, should regulation be

considered, we see the relevance of only principle-based regulation that makes it possible to change modes of communication as digitalization progresses.

We have serious concerns about making the PBS available to members every quarter or semi-annually. Providing information in the PBS format is a costly exercise. Obliging IORPs to do it more often raises administration costs and decreases pension adequacy, thereby affecting one of the main goals of the IORP Directive. Finally, IORPs would need to spend a lot of money updating their data management infrastructure in some Member States. In Member States with functioning PTS, these systems would be able to satisfy increased information needs (especially if members bear investment risks) via automated interfaces between the PTS and the IORPs' databases at a much lower cost.

Because of the diversity of IORPs and their schemes we see limited added value in the requirements regarding the appropriate choice architecture and overall presentation of information proposed in Option 3. Such requirements are rarely relevant as members and beneficiaries in most cases do not have any choice. IORPs should get the opportunity to organize communication in the most cost-effective way.

Considering the principles of minimum harmonization and subsidiarity, Member States should have the freedom whether and how to use synergies between the PTS and the PBS. PensionsEurope thinks it should be allowed to provide benefit communication through the PTS and as such replace other communication requirements.

Q4.6: Would there be challenges to implement the proposed additional requirements regarding cost transparency? Please explain.

Due to their potential impact on pension outcomes, PensionsEurope concurs with EIOPA that cost and charge transparency is crucial. However, in a context of limited or no choice for members and beneficiaries in compulsory pension schemes cost transparency seems less relevant. As IORPs are in most cases set up by the social partners, they act of their own accord in the best interests of their members and beneficiaries, which also means that they have to operate cost-effectively to ensure the best possible pensions.

It is more important to provide overall transparency and report to supervisors. In our opinion, EIOPA neglects to address the reasons why additional information requirements on costs should be added to PBS in its proposals. We do not believe that PBS's objective is served by providing information on costs and fees. According to the subsidiarity principle, Member States are better placed to regulate cost reporting. Most people save for pension in one Member State. European rules on cost reporting would give them no benefit from comparability across Member States, while they would bear the consequences of higher reporting costs and increased complexity. Comparability between Member States is improbable. The mobile workers who theoretically may benefit would in practice be overloaded with information. They should only be provided with essential information about their benefits because it is difficult enough for them to understand the necessary details of multiple pension systems.

Implementing the proposal would present difficulties in general. EIOPA recommends that administration costs be broken down and reported (Article 39, first bullet) to enable comparability. However, administration cost comparability is hard in the absence of uniformity of definitions and because of differences in service levels.

EIOPA also suggests that investment costs be broken down to make comparisons easier (Article 39, first bullet). We believe that doing so would present a misleading impression of costs.

There could be further challenges in showing investment costs in monetary terms (Article 39, first bullet), as investment returns and risks could be attributed differently among pension fund members. An IORP may invest money on behalf of various member groups with various investment options. Or perhaps the fund redistributes risks and returns based on lifecycles.

Finally, it can be challenging to estimate how costs will affect final benefits (Article 39, second bullet). Many IORPs have solidarity mechanisms in place so that costs, investment risks, and benefits are shared by members but not entirely.

For multi-option products, the requirements would make it almost impossible to provide such products due to the difficulty in providing the requested information. Particularly, information on costs of each investment option in the PBS is difficult as is information to prospective members of each investment option, certainly in monetary terms, and the impact of costs on the final benefits.

Q4.7: What are your views on the proposed options regarding projections? Are there additional costs or benefits that have not been identified? Please explain.

Currently, Member States can grant IORPs some discretion in selecting projection methodologies based on the unique characteristics of the pension schemes under Article 39 of the IORP II Directive. To our knowledge, Member States have taken advantage of this opportunity to ensure that scheme participants can understand the differences between projections (i.e., baseline scenario, future earnings scenario) when implementing the IORP II Directive. We do not desire to amend Article 39 in a way that would be challenging to implement and add new expenses for IORPs. There is no need for additional national or EU action in member states with a robust PTS. Such conduct even has the potential to impair PTS functionality.

As to the policy options, we do not see that three scenarios are necessary or helpful for scheme members in all cases, especially not in DB systems. We emphasize that the IORP Directive should not specify indicators for which projection scenarios to use. For instance, inflation varies among the Member States. There are also examples of national initiatives where a common standard for prognosis has been developed that works well to the benefit of individuals. Therefore, in our opinion, scenarios should continue to be identified at the Member State level. It should be noted that pension funds cannot and should not be held liable for projections relating to products they do not offer.

Q4.8: Would you see benefit in further developing other elements regarding projections either in the Directive or using another tool in order to establish a more common basis or provide more guidance at EU level?

We do not currently see any additional projection-related elements that call for a stronger common basis or more detailed guidance at the EU level.

Q4.9: Do you think it is relevant to introduce requirements to ensure the appropriate structuring and implementation of the pension scheme by the IORP? Please explain.

Employers or social partners create the pension scheme, not IORPs. Legally, the representatives of social partners who serve on the IORPs board have to make decisions that will be for the benefit of current and future participants. Introducing requirements to ensure the appropriate structuring and

implementation of the pension scheme by the IORP will hinder this practice. The IORP becomes responsible for the design of the scheme for which it cannot bear any responsibility.

Another problem is that these demands will probably require extensive reporting from IORPs to supervisors, which would increase costs for members. There is also the matter of the accountable supervisory NCA. The goal of EIOPA is to ensure that the pension scheme is reasonable even when social partners are not involved in its design. The selected alternative, though, seems overly broad. EIOPA emphasizes the existence of IORPs created by for-profit service providers, where the same safeguards may not be present to ensure that the interests of members and beneficiaries take precedence in the design of an appropriate pension scheme.

We believe that national legislators and NCAs are better equipped to ensure that the interests of members and beneficiaries are taken into account insofar as these IORPs operate within a single Member State. It is crucial to consider the national pension, labor, and tax laws of the nation providing the pension scheme when designing a pension plan. We believe it is premature to consider introducing legal requirements on the proper structuring and implementation of pension schemes given the likely scope of the problem described.

Q4.10: What types of choices made by the IORP do you think should be captured by the potential requirements on the appropriate structuring and implementation of the pension scheme? Please explain.

As mentioned already, we think these new requirements should not be put into effect. The design of the pension scheme might not be the responsibility of the IORP itself. Care needs to be taken not to interfere in the role of social partners in Member States.

Q4.11: Do you think there are other elements that should be addressed by requirements on the appropriate structuring and implementation of the pension scheme besides those set out under option 1 in section 4.6.1? If yes, please explain these other elements.

No, we do not see any further elements for the time being.

Q4.12: Do you agree that it would be beneficial to introduce a duty of care on IORPs towards their member and beneficiaries? Please explain and, if yes, what types of responsibilities and expectations should, in your view, be placed on IORPs in this regard?

We understand the desire to introduce a requirement for a duty of care. Nevertheless, we think EIOPA's proposal on the duty of care to act "fairly and in accordance with the best interests of members and beneficiaries and prospective members" is not necessary and also too broad. The protection of members' interests is in most pension funds already sufficiently safeguarded within the pension fund's governance structures. IORPs in particular those which are set up by collective agreements often have in their governance representatives of members and beneficiaries that limit the risk of conflicts of interest.

In addition to the afore-mentioned governance aspects, an important factor in determining whether duties of care might be necessary is the extent to which individual investment choices are possible for the members. Where these decisions are taken by the IORP board including committees with employee and employer representatives, we see no need for the introduction of duties of care.

We oppose European legislation of choice architecture. We, therefore, do not support the last part of the proposed text: "Member States shall ensure that every IORP provides prospective members and beneficiaries with the necessary tools to properly assess the choices or options provided by the IORP." Within many Member States and IORPs, members have no or few choices when it comes to their pensions. The effectiveness of choice architecture is highly dependent on the number of choices available to the member, the design of the scheme and the tools that pension funds have to help members take decisions. Considering the diversity of choice on pensions between Member States and pension funds, European legislation does not seem appropriate. Choice guidance goes beyond the scope of minimum harmonization and touches upon the design of the pension scheme.

Q4.13: What are your views on how the requirements for a duty of care should be framed?

Do you have any other comments on the following sections of Chapter 4?

According to the consultation paper, the IORP-II Directive's guiding principles, such as "prudence" and the application of the "prudent person rule," are ineffective and should give way to stricter "duties of care. We think a duty of care should not be regulated in general terms. The participation of social partners in an IORP's governance already protects members' interests.

Considering choice is very closely connected to the design of the pension scheme, we believe it falls outside the remit of what the IORP Directive should be able to regulate. Moreover, the broad differences in pension choice between IORPs and Member States would make it hard to do so.

We believe that if a general duty of care should be framed in general terms, we disagree that IORPs should be subject to Product Approval and Review Process (PARP) requirements.

Chapter 5. Shift from Defined Benefit to Defined Contributions

Q5.1: What are your views on the options for long-term risk assessments?

The ORA's legitimate emphasis is on the risks that the IORP is subject to and those that affect its members and beneficiaries. We believe that while the suggested options might address theoretical risks, they might not necessarily address the unique characteristics of various national schemes. Therefore, we prefer option 0 (no change). If any amendment to the IORP Directive is proposed, it should be written in a way that allows national legislators and NCAs to adapt to strategies that do offer members and beneficiaries additional protection that is relevant to their needs but does not produce undue administrative burdens.

In the case of IORPS where members cannot select their investments, risk preferences of members are adequately expressed by their representatives which are involved in the governance structure of IORPs. It should be noted that risk tolerance should not be directly translated into an investment strategy. According to the prudent person rule, factors like member characteristics, future contributions and statutory pensions should also be factored in. If the requirement to enact a long-term risk assessment should be introduced in the IORP II, we stress that this needs to be principles-based to leave leeway to Member States to choose approaches that provide actual benefits in the national context. The prudent person rule should therefore be properly taken into account when choosing Option 1. Also, it would be good to further specify the review period of the investment strategy; in our view, it should not be more frequent than five years.

Q5.2: What do stakeholders think about the relevance of long-term risk assessments in the case of IORPs where members can select their investments?

If and when applicable, we believe a more thorough analysis of the effects of investment choice on members and beneficiaries could have been done. Choice structures should make it easier for members and beneficiaries to choose the best investments for their needs, but they should not be regulated, especially at the EU level.

Q5.3: What are, in your view, the advantages or disadvantages of DC IORPs reporting on an annual basis information on all costs and charges to its members and beneficiaries?

We agree that it is crucial to have transparency in member and beneficiary borne fees and costs. We concur that greater cost transparency in the supervisory reporting would enable national supervisors to evaluate IORPs' cost-effectiveness and the value provided to members and beneficiaries more effectively. In general, we expect IORPs to be very cost-efficient. Objectively low costs and charges help legitimize compulsory participation in pension schemes. An approach that is less complicated and more balanced than what EIOPA proposes can help with this.

Direct and indirect costs (look-through), such as external management costs and fees in funds, should be reported, but there should not be any requirement to report indirect transaction costs in funds. In addition, particularly for multi-employer providers who do not have a close relationship with the sponsors, IORPs frequently lack knowledge of the costs to the sponsors. PensionsEurope believes that a preferred option would be to leave it to the national supervisors to decide on the level of granularity of costs. We believe that informing the NCAs of costs and charges is sufficient. IORPs do not operate in a "retail environment" because employees often do not have the option of joining or not joining an occupational pension plan, depending on the Member State. If they are unhappy with their current IORP, they cannot just switch to a different one.

Q5.4: What are, in your view, the advantages or disadvantages of NCAs providing a high-level overview of their risk assessment framework, to be included as part of the requirements in Article 51(2), as public information available to their supervised IORPs?

No answer.

Do you have any other comments on the following sections of chapter 5?

- The consultation report does not include a question on EIOPA's proposal for a requirement for IORPs to have complaints and ADR procedure. Any specific text should be carefully studied as far as it may extend the scope of issues that may be sent in the complaint's procedure and for ADR. It would not be acceptable for the directive to extend entry to judicial procedures beyond what stems from national law.
- The development in some countries like the Netherlands and Germany towards collective DC plans should be considered by EIOPA. We consider EIOPA's focus on individual DC plans to be inadequate.

Chapter 6. Sustainability

Q6.1: What are your views on the consideration of sustainability risks in the recommended requirements, in particular, on how they should be applied in a proportionate manner?

IORPs are by nature long-term investors with the primary goal of providing suitable pensions for their members and beneficiaries. This implies that they should naturally adopt a long-term perspective and consider any long-term risks that can have an impact on their portfolios. ESG risks, particularly climate change, play an increasingly significant role in risk management.

Some pension funds have implemented carbon reduction strategies or fossil fuel divestment policies to reduce these risks. The sector has greatly increased its ambition in responsible investing in recent years. The setting of carbon reduction goals, more determined engagement methods, an increase in impact investing (typically associated with SDGs), divestments and more specialized internal and external knowledge on ESG data and ethical investing are becoming key trends in the sector.

Under the current IORP II framework, IORPs are required to consider ESG factors in the following areas:

- Governance requirements: The system of governance shall include consideration of environmental, social, and governance factors related to investment assets in investment decisions.”
- Risk management: IORPs must have a permanent risk management function to identify and report a broad spectrum of risks the fund faces so that the Board can act to mitigate these risks. The risk management function must be well-integrated into the IORPs' organizational structures.
- Own-risk assessment: next to having a permanent risk management function, IORPs are also required to conduct own-risk assessments at least every three years, or whenever the risk profile of the IORP changes significantly. This exercise is already a difficult and burdensome task for smaller IORPs. This assessment feeds into the strategic decision-making process of the IORP. Where environmental, social, and governance factors are considered in investment decisions, the IORP should assess “risks related to climate change, use of resources and the environment, social risks, and risks related to the depreciation of assets due to regulatory change.”
- Proportionality: Given the diversity of the pension fund landscape, Member States are entitled to make most of the IORP II's requirements proportionate to the size, scale, and complexity of the IORP.

After considering those established practices, we would like to make the following observations:

EIOPA wants to change Article 28(2)h such that scenario analysis is used "when sustainability risks are considered." The word “when” seems to indicate optionality.” However, the proposed change to Article 19(1)b, which would require the evaluation of sustainability risks, seems to be in contradiction with this. Therefore, scenario analysis would become mandatory for all IORPs. This would be extremely burdensome for the smaller pension funds and against the principle of proportionality.

We also fear that the Solvency II developments regarding the ORSA, which also pose major challenges for insurers, will be rolled out to IORPs. In principle, the content for the application on the investment side of IORP is understandable, including the orientation towards scenarios of the Network for Greening the Financial System (NGFS) as proposed in the EIOPA Guidance of August 2022. However, we believe that many IORPs would find it extremely difficult to implement such requirements without added support and service providers. Particularly if one considers the fundamental problem that climate risks materialize gradually over time and are best evaluated in long-term cash flow analyses.

We notice that EIOPA and supervisors are taking a position that aims to define sustainability risks for the IORP as broadly as possible. When concerning the outside-in perspective, PensionEurope believes

that IORP II should focus on financial risks “related to the depreciation of assets due to regulatory change”, as proposed. This should exclude elements such as reputation risk, which is difficult to quantify and leads to focus on external stakeholders over the preferences of participants.

IORPs are already required by SFDR Article 5 to explain how the remuneration policy is consistent with the integration of sustainability risks. Therefore, it is not necessary to add that the remuneration policy must disclose how IORPs incorporates sustainability risks into the risk management system. It offers nothing new. Moreover, the regulator should refrain from regulating the same matter for IORPs in multiple legal acts.

In addition, to prevent taking undue risks, variable income cannot be correlated with the financial performance of the pension fund. In a similar vein, the compensation policy shouldn't establish numerical sustainability KPIs.

Finally, PensionsEurope welcomes the alignment of definitions with different other pieces of regulation, such as the SFDR, a framework already familiar to IORPs. This would be the case for the definition of sustainability risk.

Q6.2: What are your views on the interaction between sustainability preferences of members and beneficiaries, and the requirement for IORPs to take into consideration the sustainability factors in investment decision-making (current Article 19(1)(b))?

When mandating the inclusion of sustainability preferences, the consultation paper correctly identifies several specificities of the pension sector that must be considered. Those specificities can be described below:

In IORPs, members and beneficiaries or their representatives often are involved in the governance structure and the set-up of the investment policy. This means that the IORP already has structures in place that allows the incorporation of the sustainability preferences of members into the decision-making process. Many IORPs have a single investment policy that has to accommodate all members and beneficiaries needs. This means that different views must be translated into a single policy. Furthermore, in many cases, employees have enrolled automatically, and they will never enrol through a financial adviser.

These elements of IORPs keep costs at a low level, leading to good pension outcomes for members and beneficiaries. At the same time, this means that in many if not most cases the member or beneficiary does not have an individual choice.

PensionsEurope believes that IORPs should continue to be allowed to make use of their governance structures to assess sustainability preferences, e.g., through members and beneficiaries or their representatives on the board and to reflect them in a single investment policy considering as well other investment principles. There should be an explicit mention of this possibility in Article 19(1)b.

We completely concur with EIOPA that sustainability preferences of members and beneficiaries should not be interpreted as instructions. In accordance with other investment principles, they should be seen as input into the investment strategy. We think that the IORP should ultimately oversee deciding on investment decisions, including risk appetite. Making informed decisions is difficult because sustainability is not a simple issue.

EIOPA's analysis differentiates between situations of automatic enrolment on the one hand, and situations with voluntary enrolment with investment choice on the other hand. In the latter situation, "IORPs should implement a method to directly gauge members' ESG preferences that is aligned with the member's decision on the expected risk-adjusted returns". When members can select the investment option, PensionsEurope believes the ESG decisions for the various investment options are still up to the boards of the IORPs where both employees and employers are represented. The choice of the members should be seen as an indication of their ESG preferences. Before being enrolled in an IORP potential members are informed as to whether the investment policy takes ESG concerns into account, in the case of Art. 8/9 SFDR products, and they are given the opportunity to decide whether or not to join the pension plan. Moreover, the investment decisions of members are not in any respect related to a sale process or advice provided to members by the IORP.

Beyond this, it would be very expensive and challenging to determine the interests of members and beneficiaries. Some significant challenges noted by national supervisors are already listed in the consultation document. Depending on the level of knowledge and commitment of the respondents, the result might not be representative or well-founded. For this reason, PensionsEurope cautions against requiring that all IORPs perform member and beneficiary surveys to determine their preferences for sustainability. For IORPs with many members and beneficiaries it is challenging to find out what their sustainability preferences are even if technology-based solutions are used. It would probably be a vast variety of preferences. It would not be appropriate to accommodate all of these when taking investment decisions. For smaller IORPs, these costs would be significantly higher relative to their size. In some jurisdictions, pension funds already need to survey risk preferences, making the incorporation of sustainability preferences even more complicated.

However, if these considerations are accounted for such as the use of existing governance structures and lack of a requirement for a survey, PensionsEurope can support the general notion of incorporating sustainability preferences in investment decisions.

Q6.3: What are your views on how sustainability considerations should interact with other investment objectives of the prudent person rule (Article 19(1)(a)(c))?

Historically, there was a debate about whether considering non-financial factors in investing was allowed under the fiduciary duty, particularly in common law countries. However, this debate has long been settled in many countries in courts and/or legislation. Article 19(1)b from the IORP II directive clarifies that IORPs shall be allowed to take account of ESG factors. PensionsEurope thinks that the way the prudent person principle is currently being applied in many countries has not constrained pension funds in their ambition to make impact investments or get out of profitable sectors that are thought to pose ESG risks.

PensionsEurope supports that the consideration of sustainability preferences should be aligned with the principles of Article 19(1) and c. The main purpose of an IORP is to provide good pensions. The provisions in (a) and (c) warrant that the portfolio is managed with this aim in mind.

Finally, PensionsEurope notes the importance of article 19(1) f. Diversification is a cornerstone of the investment policy of an IORP. PensionsEurope believes that when balancing diversification needs and sustainability preferences, the former should be maintained.

Q6.4: What are your views on the consideration of stewardship to address sustainability risks, in particular, on how it should be applied in a proportionate manner?

Many European IORPs have engagement and stewardship policies. They increasingly challenge companies on their sustainability performance and transition plans, especially on climate change. IORPs have been drivers of successful AGM resolutions on greenhouse gas disclosures and climate ambitions. We have also observed high-profile cases of IORPs divesting from fossil fuels after concluding that engagement was not successful enough.

At the same time, both size and investment structures are relevant factors in determining the ability of IORPs to have stewardship policies. The more shares, the more influence an IORP has over investee companies. Moreover, IORPs may either invest directly in companies, or via different types of collective investment vehicles (AIF and UCITS). Indirect ownership means the IORP is not in a position to apply stewardship itself. It may, however, contract the asset manager to conduct stewardship on its behalf and disclose this information under Art. 3(h) of the SRD II.

The SRD II acknowledges this diversity through the “comply-or-explain” approach to the stewardship policy in Art. 3(g). EIOPA’s proposal would not change the nature of this approach but only require additional disclosures on the same policy. This seems to be an avoidable duplication, leading to unnecessary costs. At the same, the costs of implementation for large IORPs would not be excessive.

Do you have any other comments on the following sections of chapter 6?

- The gender pension gap is a societal problem. It is mainly affected by the labour market conditions. The IORP does not affect whether the employment relationship continues or whether the contributions are regularly based on salary. Only, those eligible people who work for specific sectors are covered through IORPs and therefore, the gender pension gap is out of the scope of IORP II as it legislates about the pension institution and not the pension scheme.
- EIOPA should carefully evaluate the potential effects of any changes to the IORP Directive regarding ESGs in the context of other EU laws, particularly the SFDR. We would be opposed to a scenario in which the IORP II amendments would force IORPs to automatically fall under Article 8 SFDR or end the choice for IORPs to opt out under Article 4.

Under article 8 SFDR, the ESAs have included in the definition of ‘promotion’ situations ‘where a financial product complies with certain environmental, social or sustainability requirements or restrictions laid down by law’ ... ‘and these characteristics are “promoted” in the investment policy’. This promotion could appear in almost any type of document created by the IORP as information, reporting, general impressions, or targets. And under IORP II, some of these disclosures are needed. Additionally, IORPs cannot choose not to report PAIs “where they consider principal adverse impacts.” It could be argued that the proposal on double materiality requires IORPs to take (principal) adverse impacts into account. For PAI reporting, it is necessary to hire sustainability data providers, and these expenses are disproportionately high.

The SFDR contains components of a labelling tool in addition to its intended use as a disclosure tool. Consumers are not the only ones who suffer from this; financial market participants do too. The direction of that discussion is currently unknown, but the SFDR will be reviewed. Some are calling for the SFDR to include more labelling components and minimum standards.

This could lead to limitations and exclusions of certain investment types under Article 8. This would automatically limit the universe of investments available to IORPs, potentially resulting in lower investment returns and, consequently, lower pensions.

Therefore, EIOPA should think about how to prevent unintended spill over effects from one directive to another directive or other regulation. The ESAs have some control over this because they defined the word "promote" in a Q&A while the term is left undefined in the SFDR.

EIOPA should also consider the balance between on the one hand what EIOPA intends to advise to the Commission on proportionality, and the other hand what EIOPA intends to advise to the Commission on sustainability, if this last bit of advice will considerably raise administrative burdens on small IORPs.

Chapter 7. Diversity and Inclusion (D&I)

Q7.1: What are your views on the recommended requirements on D&I in management bodies, in particular on how they should be applied in a proportionate manner?¹

PensionsEurope welcomes the intention of EIOPA to tackle the issue of diversity and inclusion. We support the notion that diverse management bodies can improve decision-making processes and can lead to a better reflection of the profile of members amongst decision-makers.

At this point, we want to mention that many countries already have in place policies that promote diversity and inclusion in IORPs through self-regulation. For example, in the Netherlands, self-regulation requires that there be at least one person of the under-represented gender and one person under 40 years old on the management board. The requirement is subject to a comply-or-explain mechanism. Moreover, there is non-binding guidance suggesting IORPs consider D&I policies in at least Italy and Sweden. In other Member States, e. g Germany, company law requires undertakings/organizations (including IORPs) that meet certain criteria to fulfill certain obligations about diversity and inclusion.

The fundamental distinction between IORPs and other financial institutions is that IORPs are institutions strongly embedded within national social models and primarily governed by social and labour law.

IORPs are often set up and managed by social partners in contrast with other financial institutions and this practice has several implications:

- Many IORPs are based on collective agreements. The social partners negotiate the pension schemes and decide their design. Therefore, board members are elected by the employer(s)' representatives and the trade unions or other employee representatives.
- Member selection procedures for the management and supervisory bodies may differ.

Furthermore, the issue of proportionality is essential. The management bodies of IORPs are often only two people in size and are typically small in some countries. Several IORPs simply cannot stand for all societal groups in their management bodies due to their small size. Finding board members can be difficult for small IORPs. New requirements would make it even more challenging to elect board members with adequate qualifications. PensionsEurope believes that the fitness of potential Board members is fundamental, and it should always be the primary factor to be taken into account.

¹ WG IORP Follow-up actions – outcomes January 2023

Due to all these factors, any potential binding legislation on DI considerations in the appointment of members of the management and supervisory bodies of IORPs, like the one introduced for other financial institutions, can become harmful, and this can be reflected in the future benefits of members and beneficiaries. Within this context, a comply-or-explain principle for having D&I on the management board, as EIOPA advises, could potentially be appropriate.

Q7.2: What are your views on a definition of diversity and inclusion at the European level? Which definition would you suggest? In particular, which diversity criteria should it include?

EIOPA accurately recognizes the importance of D&I to society and the need for regulatory coherence. When considering a definition, we invite EIOPA to look at principles 2 and 3 of the EU Pillar of Social Rights, which are well-established in terms of gender equality and equal opportunities.

Q7.3: What are your views on the public disclosure in the annual report of the representation target for the underrepresented gender in the management or supervisory body and the policy on how to increase the number of the underrepresented gender in the management body and its implementation?

PensionsEurope recognizes IORPs as social institutions that should be accountable for their actions. Due to the heterogeneity of IORPs in Europe, PensionsEurope believes that requesting or not any public disclosure of the annual report on diversity and inclusion is better to be considered at the national level. In considering public disclosure in the annual report, consideration should be given to the costs of having the representation target and gender diversity policy audited annually. This goes especially for smaller IORPs.

Do you have any other comments on the following sections of chapter 7?

About PensionsEurope

PensionsEurope represents national associations of pension funds and similar institutions for workplace and other funded pensions. Some members operate purely individual pension schemes. PensionsEurope has **25 member associations** in 18 EU Member States and 4 other European countries².

² EU Member States: Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Portugal, Romania, Spain, Sweden. Non-EU Member States: Iceland, Norway, Switzerland, UK.

PensionsEurope member organisations cover different types of workplace pensions for over **110 million people**. Through its Member Associations PensionsEurope represents **€ 7 trillion of assets** managed for future pension payments. In addition, many members of PensionsEurope also cover personal pensions, which are connected with an employment relation.

PensionsEurope also has **20 Corporate and Supporter Members** which are various service providers and stakeholders that work with IORPs.

PensionsEurope has established a **Central & Eastern European Countries Forum (CEEC Forum)** to discuss issues common to pension systems in that region.

PensionsEurope has established a **Multinational Advisory Group (MAG)** which delivers advice on pension issues to PensionsEurope. It provides a collective voice and information sharing for the expertise and opinions of multinationals.

What PensionsEurope stands for

- A regulatory environment encouraging workplace pension membership;
- Ensure that more and more Europeans can benefit from an adequate income in retirement;
- Policies which will enable sufficient contributions and good returns.

Our members offer

- Economies of scale in governance, administration and asset management;
- Risk pooling and often intergenerational risk-sharing;
- Often “not-for-profit” and some/all of the costs are borne by the employer;
- Members of workplace pension schemes often benefit from a contribution paid by the employer;
- Wide-scale coverage due to mandatory participation, sector-wide participation based on collective agreements and soft-compulsion elements such as auto-enrolment;
- Good governance and alignment of interest due to participation of the main stakeholders.

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