



***PensionsEurope's Position Paper on the IORP II Review:  
Pension Package of Supplementary Pensions***

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## **Introduction**

PensionsEurope welcomes the publication of the pension package aimed at boosting supplementary pensions, as an attempt of the Commission to ensure adequate retirement income.

PensionsEurope stresses that pension funds are long-term investors with the primary objective of delivering adequate pensions to their members and beneficiaries. For this reason, pension funds require a well-designed regulatory framework to operate effectively.

In the European Union's Member States, pensions are based on unique cultural, historical, and political factors, and are deeply rooted in national social, labour and tax law. Given this diversity, any EU initiative for pensions must be based on the principles of subsidiarity and proportionality and avoid a one-size-fits-all approach.

PensionsEurope welcomes the willingness to develop and strengthen supplementary pension schemes across the EU, also as part of the Savings and Investments Union. This is a positive development from a social, but also from a financial perspective. However, it should be kept in mind that an occupational pension is often a benefit given by an employer towards his employees, and often also on a voluntary basis or based on collective agreements, which can also be generally binding. IORPs are institutions with a social purpose that provide financial services as stated in the current IORP II Directive. Therefore, they use capital markets as a necessary tool to provide better returns to members and beneficiaries.

The implementation of IORP II Directive increased costs significantly for IORPs. These cost increases are borne by the beneficiaries and/or the sponsoring undertaking(s) and in some Member States the increasing costs have caused IORPs to close. The proposed changes need to take into consideration the national specificities and the characteristics of the sector. Unfortunately, in many instances, we observe that the proposed amendments entail an increase in the administrative burden for IORPs and an extensive lack of proportionality. The EC has not conducted a proper impact assessment before launching the proposal to change IORP II directive and this is not in accordance with the EC's own better regulation guidelines.

The pension landscape throughout Europe is very diverse. The IORP II Directive recognizes this heterogeneity and therefore aims at minimum harmonization. However, many of the proposed amendments go far beyond what can be considered a minimum harmonization framework.

In this position paper, we aim to express our views in detail on the proposed revisions in the legal text of the IORP II directive.

### **1. Investment rules (Article 19)**

From previous communications by the European Institutions, it is clear that the increase of European pension investments to venture capital, private equity, and listed equities remains a major goal of European policy makers. IORPs are by nature long-term investors with the primary goal of providing suitable pensions for their members and beneficiaries. We believe that the increase in investments in the aforementioned asset-classes could be beneficial for European financial markets and more broadly to societies and hence for our members and beneficiaries. However, PensionsEurope believes that

proper diversification and sound risk management must remain the investment policy's priority regardless of any other desirable political objectives. The prudent person principle and the fiduciary duty, as expressed currently in Article 19 of the IORP Directive, are sufficient and allow for proper diversification of portfolios. The experiences among PensionsEurope's members since the entry into force of the revised IORP II Directive in 2016 has proven that even in periods of low interest rates, IORPs could fulfill their pension promises. Below, we will express our views on the specific changes that have been proposed:

- Principles-based prudent person principle:

PensionsEurope is concerned about the Commission's intention to review Article 19. The Commission wants to introduce an investment framework solely based on risk-based prudent person principle, in which MSs can impose restrictions only if risk is fully borne by members and beneficiaries (Art: 19(6)). If current restrictions had posed a problem to IORPs in practice, then many IORPs would have held assets from restricted asset classes in their portfolio to the maximum extent possible under the restrictions. However, that is not and has not been the case. Furthermore, the current formulation is in line with the minimum harmonization approach of the IORP II Directive that Member States are allowed to determine additional quantitative requirements.

Almost half of EEA countries (12 countries) have restrictions in place on IORPs' investments in alternative assets. Analyses by EIOPA also shows that the additional quantitative requirements for IORPs leave sufficient space for investing in alternative and illiquid assets and thus do not hinder appropriate allocation. (See for more details [EIOPA-BoS-25-421-Ann ex quantitative investment limits](#) 09/2025, page 1.)

Furthermore, additional analyses by EIOPA ([EIOPA-BoS-25-421-Statistical annex on IORPs data](#) 09/2025) show no correlation between IORPs in Member States with quantitative requirements investing less in illiquid assets than IORPs without supplementary quantitative requirements.

In some Member States, the prudent person principle is treated as an "open norm" in national law, including the rule that investments in non-regulated markets are to be kept at prudent levels. In case quantitative limits are in place, PensionsEurope believes that Member States instead of competent authorities, are in a better position to assess whether they are overly restrictive, considering the national specificities of IORPs. If pension institutions need more leeway to invest in other asset classes, the national legislator – like recently in Germany – is willing to modify the existing quantitative restrictions and/or other legal requirements posing an obstacle to reasonable and responsible investment into such assets. Extensive ALM studies work as a basis for IORP investment strategies, which are overseen by internal or external risk-management and control departments.

**In Member States with occupational DB schemes, existing quantitative restrictions have not prevented IORPs from achieving diversified portfolios. However, too rigid percentage-based investment limits may not be inherently aligned with a genuinely risk-based framework.** This applies in particular to IORPs operating DC schemes, as in those schemes, risk lies with the members and beneficiaries. In this context, the prudent person principle should remain the cornerstone, supported

by appropriate governance and risk management, while allowing sufficient flexibility in the design of investment strategies aimed at supporting adequate pension outcomes.

**Any reform of Article 19 should therefore reinforce a coherent, risk-based framework while, in line with the IORP II Directive's minimum harmonization approach, preserving Member States' discretion, avoiding unnecessary rigidity and ensuring that the investment capacity of IORPs is not inadvertently constrained.** Where MS decide to keep quantitative limits at national level, they should be proportionate and should not operate in a way that unduly restricts well-justified long-term investments, including exposure to alternative and less liquid asset classes consistent with the long-term nature of IORPs.

In addition, where IORPs increase exposure to less liquid assets as part of a long-term strategy, proportionate liquidity management tools may support the effective implementation of investment policies. Such tools, when used transparently and in the best interest of members and beneficiaries, are fully compatible with the prudent person principle and long-term asset-liability management on the one hand and the minimum harmonization approach of the directive on the other hand.

- Sustainability:

**PensionsEurope opposes the proposal to introduce the concept of double materiality and the integration of sustainability preferences when IORPs can gauge the sustainability preferences of their members and beneficiaries.**

Concerning the concept of double materiality perspective on investments, PensionsEurope believes that the IORP II Directive should only focus on financial risks related to the depreciation of assets due to regulatory change (so called stranded assets). This should not include factors like reputation risk, which is hard to measure and makes participants' preferences less important than those of external stakeholders. Moreover, possible misalignments with the ongoing review of the Sustainable Finance Disclosure Regulation (SFDR) should be avoided. The proposal to consider the potential long-term impact of the investment strategy and decisions on sustainability factors, as defined in Article 2, point (24), of Regulation (EU) 2019/2088, risks contradicting the proposal to delete entity level disclosures for FMPs contained in the proposal to review of the SFDR.

Concerning the integration of sustainability preferences, 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 allow the adequate incorporation of the sustainability preferences of members into the decision-making process, e.g. by means of an internal supervisory board, in which employers and employees are represented, or by means of General Meetings, in which members or elected members representatives participate. In this case, the decision of the supervisory body and/or the General Meeting sufficiently reflects the sustainability preferences of all members and beneficiaries. In some Member States, for instance, members' representatives are members of the Boards of Directors of IORPs, which approve and monitor the investment policy.

In addition, many IORPs have a single and collective investment policy that must accommodate members' and beneficiaries' needs. This means that different views must be translated into a single

policy. Furthermore, in many cases, employees are enrolled automatically, and they will never enroll through a financial adviser.

Furthermore, we disagree with the EC's proposed definition of "sustainability preference". The definition is based on three sustainability classifications in European law: the Taxonomy, sustainable investments as defined by the SFDR, and principal adverse impact indicators. We do not believe that pension funds should be required to use this narrow definition, which is based on concepts that members are not aware of and do not understand. Members and beneficiaries often think in themes (like climate, tobacco, social housing, and animal welfare) and pension funds want to engage in sustainability in a manner that leads to a proper understanding of the relevant context by members and beneficiaries. Finally, also in this area it would be important to avoid misalignments with the ongoing review of the SFDR, where the current notion of "sustainable investments" is expected to be phased out.

## **2. Scale (Article 31 and 49a) and Benchmarking (Article 51(4) and 41a)**

### **I. Scale and consolidation**

PensionsEurope believes that the proposal concerning the outsourcing of IORPs' activities and benchmarking / underperformance as well as the introduction of a structured supervisory dialogue do not add value in the existing IORP supervisory environment. PensionsEurope believes that a structured dialogue can create external indirect pressure to IORPs relating to issues that are usually competencies of their governance. We do not wish to see any external disruption of IORPs' governing models.

In general, the consolidation of pension funds in many EU Member States has already been happening for years. This trend is mainly driven by increasing governance requirements, regulatory costs, and the complexity of running a pension scheme. Small IORPs may have proportionally higher administration costs. Because of this, social partners and/or sponsoring undertakings of small schemes periodically may reevaluate whether consolidation is in the best interests of participants or whether the scheme is still cost-effective. It can also be the case that the sponsor of a single-sponsor scheme carries the costs of pension administration, as it wants its own scheme as part of the HR offering to its employees. However, we are of the opinion that the question whether and to what extent pension funds are merging can only be decided by the parties involved at sponsor level and hence cannot be an issue of the IORP II Directive which merely establishes the framework at European level.

Instead of a consolidation process, there are ways in which smaller IORPs can access expertise or benefit from economies of scale. These include e.g. the fiduciary management model, collective investment pools for multiple IORPs, for example, used by multinationals in managing different national schemes, or offered by asset managers, as well as outsourced CIO structures. Hence, size is only one among several factors that can determine whether an IORP can operate especially cost-efficiently. EIOPA's Costs and Past Performance Reports regularly show that most IORPs in the EU do not have a cost problem. IORPs in the EU have a well-diversified asset allocation. Eventually, the board of the pension fund determines the strategic asset allocation. In IORPs in many Member States, this board has both employee and employer representatives who act in the best interest of members and beneficiaries.

In this context, we would like to emphasize that the big size of a pension fund does not always guarantee a higher return, and that also smaller entities can and do deliver a good performance. Furthermore, (very) large pension funds may also constitute a systemic risk in case of unforeseeable financial problems, which should be avoided.

EIOPA's analyses ("[EIOPA-BoS-25-420-Statistical annex on IORPs data](#)," pp. 22-25) do not show that large IORPs in the EU systematically achieve higher returns than smaller institutions presumably as plenty of outsourcing already takes place and various service providers are involved. The evaluations for administrative costs tend to show a size effect, but not for investment costs (see EIOPA BoS 25-420 Statistical annex on IORPs data, graphs on pages 26-27).

The European Commission proposes to restrict the general proportionality criteria by removing "size" and "internal organization". We are very critical of this, as it would increase compliance costs for smaller IORPs. Furthermore, members and beneficiaries are often represented in the management and/or supervisory bodies of IORPs, thereby guaranteeing that the institution acts in their best interest. This set-up should continue to be reflected in the application of the directive.

In addition, we believe that the Small IORP exemption in Article 5 should be reformulated, and the introduction of a new threshold of 1,000 members/beneficiaries and EUR 25 million in assets, as proposed by EIOPA's advice, would be an improvement for enhancing proportionality.

We also 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 directly applicable regulation should be conditional to a positive impact assessment and otherwise, a principles-based approach anchored in the IORP II Directive, which takes into consideration the IORPs' particular role and characteristics, would be more appropriate.

In the context of a triangular relationship where the sponsor bears all liabilities and costs it is up to the sponsor to assess economies of scale and efficiency options not the IORP.

## **II. Benchmarking and the concept of underperformance**

The proposed amendments to the IORP II Directive also create the concept of 'underperformance' as a new dimension relevant for IORPs and NCAs (in the Supervisory Dialogue, the information requirements (41a) and the "comparison website for IORPs" (51(4))). The specification of the benchmark for "underperformance" raises significant conceptual and operational questions. The regulations concerning the publication of costs and underperformance appear to be intended to reduce or keep costs low and achieve higher performance values through "publication pressure." In our view, there is a great risk that these regulations will be implemented disproportionately. In addition, there are considerable uncertainties and questions regarding the specific design of the

“benchmarking” by the supervisory authorities, which are to be based on “clear, objective, and transparent benchmarks”.

Those uncertainties are about the way that appropriate benchmarks will be set for the various occupational pension schemes/IORPs, and the kind of standards that will be used for DB schemes and DC schemes. But even if this benchmark differs from market indices used to define investment policies and the choice of which remains exclusively within the remit of the IORP, there is the open question about the kind of “promotion” of higher performance by the supervisory authorities which is potentially envisaged and the future role of micro- and macroprudential supervision.

Similarly, there may be effects of “synchronization” of investment allocations. The specification of the respective benchmarks for measuring investment performance and underperformance, including the escalation procedure, has an impact on the actual allocation and does so in a uniform manner for many investors. In order to avoid being perceived as outliers or subject to corrective measures, institutions may increasingly align their portfolios with reference benchmarks. This can ultimately limit the investment universe and even lead to structural risks if a large number of investors invest in similar or the same benchmark (potential concentration risks due to well-known indices acting as a “magnet” for allocation in order to reduce deviations from the benchmark required by regulators) as well as reduce the scope for differentiated long-term strategies and discourage investment in less liquid or more sophisticated asset classes that require longer time horizons to materialise returns as is one of the most important aims of the SIU. In addition, responsibility for investment performance is delegated. Given the diversity of IORP designs, risk-sharing mechanisms and liability structures across Member States, preserving flexibility in investment policies remains essential to achieve the goal of “higher returns” with these financial instruments.

Generally, any form of determining an “underperformance” of an IORP based on certain market benchmarks is – especially for DB systems – completely inappropriate, as it entirely ignores the dimension of risk borne by the beneficiaries. For example, a product/scheme that includes guarantees and/or assumes biometric risks cannot be compared with a “pension” product/scheme that lacks such features. Such a comparison would be highly unfair and not appropriate. Even beyond that, a pure comparison of performance (and costs) of IORPs providing guarantees and covering biometrical risks could lead to completely wrong steering signals.

IORPs’ performance must be assessed over the long term; a focus on performance in brief time periods would be counterproductive, exposing members to short-termism. The asset allocation of DB schemes depends largely on the respective pension schemes’ liabilities — an IORP with many beneficiaries will have a completely different capital investment than an IORP without beneficiaries. This makes meaningful comparisons between different schemes very difficult. Furthermore, communication based solely on performance would overlook other crucial building blocks of the future pension, such as employer contributions, scheme design, benefits and tax incentives.

In some Member States, the Pension Benefit Statement and the Pension Tracking System (where they are in place) already provide members with valid tools to assess the adequacy of their pension savings in terms of costs and performance. The introduction of an obligation to notify members of underperformance, beyond imposing a huge burden, would overlap with the current information

package. At the same time, in Member States where DB schemes remain predominant, this form of information to assess adequacy in terms of costs and performance is not appropriate. Any introduction of a similar requirement and the obligation to notify members of underperformance would increase costs and burdens even further, with no added value.

### **III. Overall assessment**

The topics of “scaling up” and “(under-)performance/benchmarking” should not be target categories for supervisory authorities—the final objective should be to protect the rights of members and beneficiaries and to ensure the stability and soundness of the IORPs.

#### **3. Scope (article 4)**

PensionsEurope disagrees with changing the existing scope of the directive. We believe that including supplementary so-called first pillar bis pensions, i.e. privately managed social security schemes, or savings products under the scope of the directive would not be feasible as the purpose of the directive is to cover occupational pension institutions. The envisaged expansion of the scope could fundamentally alter the content and structure of the IORP directive, making it difficult to consider its specific characteristics, notably the workplace context and the triangular relationships, and risks.

PensionsEurope does not believe that expanding the scope would increase investments and make occupational pensions more accessible in EU Member States. The interests and unique characteristics of our sector have not always been appropriately considered by EU policymakers. Many other EU secondary legislations merely refer to the scope of the IORP II Directive without considering the specificities of IORPs. We believe that the necessary emphasis should be given to existing institutions within the scope. Otherwise, we face the danger of having one-size-fits-all solutions implemented. This could be harmful for IORPs (and in the end for their members and beneficiaries and/or sponsoring undertakings), supplementary first pillar bis pensions, and savings products.

We are furthermore of the opinion that the possibility of an optional application, as foreseen in the new Art. 4, is generally not necessary. The national legislator already has broad leeway according to Art. 288 of the TFEU whether he extends scope to other institutions.

In general, the heterogeneity of IORPs requires proportionality, and together with the minimum harmonization principle of the IORP II Directive, the proportionality principle should allow NSAs and national legislation to judge to what extent certain regulatory provisions within a given Member State apply to a particular type of IORP. Therefore, there is no need to add more institutions under the scope.

#### **4. Supervision framework (Article 48-49-50)**

In our view, IORP II has achieved a reasonable level of convergence. On the one hand, IORP II provides for solid minimum standards, and on the other hand, IORP II - as a minimum harmonization directive - provides the Member States with sufficient flexibility to accommodate the specificities in their diverging national pension systems.

For IORPs supervisory convergence is neither necessary nor desirable. The pension sector, particularly occupational pension schemes, operates under unique national social, labour, and tax laws that are deeply embedded in each country's socio-economic framework. Furthermore, the size and the design of occupational pension arrangements differ largely across the Member States, notably because of the size and importance of the first pillar social security pensions in the respective countries. European institutions have to limit themselves to those areas of regulation that are within their competence. Attempts at harmonization in other areas are against the EU treaties, counterproductive, undermine confidence in European institutions, and are ultimately inefficient.

For this reason, we oppose the Commission's proposals concerning the enhanced empowerment of not only NCAs, but also the European Commission and EIOPA (guidelines instead of opinions). We believe that a supervisory framework similar with that full harmonization approach of Solvency II is unnecessary and will only increase the cost and the administrative burden of IORPs without any kind of added value. At the same time, we would like to point out that this is against the current political goal of the Commission to reduce administrative burden and red tape by 25% and also against the political goal of strengthening occupational pensions and contributing to getting more citizens into occupational pension systems.

Finally, the IORP II Directive already provides NCAs with sufficient and adequate powers to carry out their tasks. We are not aware of any problematic situation in any Member State; especially with view to the long-lasting period of low interest rates and the perturbations during the COVID-crisis. Additional supervisory powers should only have been proposed if they were based on an adequate analysis of shortcomings in the IORP II Directive in its current form and this is not the case. Therefore, it is essential to maintain the necessary flexibility in supervision to accommodate the specific nature of the pension landscape.

The new Art. 50 empowers EIOPA to develop draft ITS to ensure uniform conditions of application of the article in question. PensionsEurope shares the objective of avoiding overlaps between national and EU reporting. We believe that the procedures, formats and templates for reporting should be set at national level, reflecting the local supervisory practices as well as national features of IORPs.

## **5. Solvency Margin (Article,17, 18a)**

PensionsEurope believes that the IORP II should remain a minimum harmonization directive. Therefore, we are firmly against the introduction of delegated acts and RTSs. PensionsEurope fears that the proposal to adopt delegated acts in accordance with Article 64a (Exercise of delegation) amend the numbers and percentage values of the required solvency margin to adapt to market developments in connection with the proposed Article 18a aim to restart the debate about the so-called Common Balance Sheet. We believe that this proposal will eventually result in introducing Solvency II or similar capital requirements. We would like to stress that an extensive discussion about the harmonized risk assessment and the Common Balance Sheet took place during the previous review. At the end, those ideas were deemed not appropriate for IORPs, and they were clearly rejected by the legislators. We believe that restarting this debate is unnecessary, and for this reason, we are fully against these proposals.

## **6. Stress tests (Article 18a)**

PensionsEurope is against Solvency II or Solvency II-like (via the new Art. 18a “internal stress testing”) solvency requirement for IORPs with DB schemes. These requirements are totally unfit for IORPs. A look at the insurers' portfolios shows that this regulation runs counter to SIU's objectives. This will lead to an indirect introduction of the so-called Common Balance Sheet in the MSs still having DB schemes. Common Balance Sheet proposals were specifically rejected by the legislator when IORP II was adopted. We would like to stress that there is no added value to restarting this debate of the past.

## **7. Information (Article 37a, 38 and 39)**

PensionsEurope opposes the proposals concerning the harmonization of the information provided to members and beneficiaries. Moreover, we oppose the intention to introduce RTSs concerning the Pension Benefit Statement. Implementing RTSs can be considered detrimental to the provision of information for members and beneficiaries if national standards are better than the potential EU standard. IORP II is and should remain a minimum harmonization directive. Therefore, we are against the introduction of any delegated acts, RTSs and guidance.

PensionsEurope believes in a principle-based communication approach, setting open norms to ensure effective communication. Open norms provide a uniformity of goals, intended results and principles, rather than prescribing communication formats, tools or channels. In applying open norms, Member States are enabled to design effective communication that considers the existing characteristics of the respective pension systems and meets the specific communication requirements by using already implemented communication channels. A detailed standardized EU-wide communication approach that disregards national characteristics would only lead to more administrative costs without providing any added value or transparency to members and beneficiaries. Information needs may differ depending on plan design; thus, pension providers should be able to choose effective communication rather than execute a unified compulsory communication approach. In some Member States communication on occupational pension plans is part of social and labour law. Hence, Member States are best placed to define the communication approach IORPs must follow regarding disclosure to members, taking into account the specificities of the national supplementary pension systems.

PensionsEurope believes that many differences in terms of structure and layout between the pension benefit statements from different providers do not hinder an adequate understanding of the mandatory contents of these documents. It should be recognized that it is expensive to change the format and content of the Pension Benefit Statement (PBS). Some Member States have already standardized the PBS. Elements such as disclosure of costs and past performance have already been addressed comprehensively and consistently with the European Commission's proposals. Adapting to an EU standard in those Member States would be unduly burdensome, without enhancing the information provided to members and beneficiaries. PensionsEurope promotes an approach to the PBS that reflects the diversity between Member States, IORPs and even pension schemes. According to the principles of minimum harmonization and subsidiarity, Member States should be able to determine their own pace and direction of change and, in line with the minimum harmonization approach of the Directive, should be granted a high level of flexibility to adapt the EU standard set directly in the IORP II Directive to national specificities. That is especially important considering the

high operational costs of change. Furthermore, this becomes particularly relevant due to the Commission's proposal which directly obliges IORPs to provide information to the national Pension Tracking Service (PTS).

Concerning the PTS, PensionsEurope believes that their structure and use should remain an issue for the Member States – even more so as PTS have already been successfully implemented in many Member States. PTS should also adapt to the information needs of members and beneficiaries in a Member State. In countries with well-developed pension systems, we observe that PTS often provides information on statutory and supplementary pensions. PensionsEurope believes that there is no one-size-fits-all solution concerning the extent and the level of the information that is covered by a pension tracking system. The information needs are primarily determined by the features of the pension scheme in question: DB or DC (as the determining factor for the extent of the investment risk), options relating to retirement (early retirement, decumulation options), the existence or non-existence of investment choices of a member, etc. Member States should have flexibility in the type of information included, apart from the structure.

Furthermore, we believe that data impartiality and reliability are essential. Using data that is already accessible in the PBS at the initial stages of PTS can ensure those elements. Nevertheless, the legal responsibility of data completeness and accuracy by IORPs (Art. 37a (2) and (4)) is difficult to be assured.

In addition, PTS costs are also very important. The key elements of establishing and managing a PTS are sponsoring the system, developing and implementing the essential features and obtaining the information that is available without deviating from that which is supplied by the primary sources (employers, pension funds, and insurance undertakings).

Moreover, PensionsEurope stands critical and not supportive to the new information requirements proposed for DC pensions. In general, transparency of costs and performance in DC schemes can be crucial from a theoretical point of view because of the potential effect on pension outcomes. In the context of limited or no choice for members and beneficiaries in compulsory pension schemes, like in the case of the desired auto-enrolment, it can be more important to provide overall transparency and report to supervisors than to inform members and beneficiaries. Providing this information to individual members and beneficiaries in much detail beyond the level of choice or options they have is likely to lead to an information overload, and it can also be misleading regarding the effects for the individual recipient. It could also lead to fewer investments in private assets as those investments typically imply a higher cost (potentially compensated by a higher return). Where relevant, a detailed provision can be offered to interested members, for example, on the website or on a personal pension portal.

PensionsEurope also criticizes that in some instances the proposal goes even beyond (new) information requirements and establishes new advisory duties (e.g. in the pre-retirement phase about options for disbursement). Such new duties could be almost impossible to fulfil from a practical standpoint and produce new and unwarranted liability risks.

Other proposals, e.g. the planned right to place the form of the pension benefit statement in the hands of the addressee (paper or electronic form, digital portals as a third option unfortunately even remain

unmentioned) would thwart the overarching goal of simplification, create new bureaucratic burdens and ultimately produce a setback for the digitalization of communication about pension benefits.

Finally, the European Commission recommends introducing a new provision establishing a duty of care principle. PensionsEurope believes that this is not necessary. IORPs already have a “prudent person” requirement. Moreover, 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 aforementioned 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 the involvement of supervisory boards with employees and employers’ representatives, we see no need for the introduction of a duty of care. The duty of care could potentially have far-reaching consequences, including for directors' liability. It will certainly increase costs, as members will require intensive guidance when making decisions (e.g., DB-DC, investment options, scheme changes, etc.). Duty of care requires acting in the best interest of all stakeholders, also the sponsors who bear the risks.

#### **8. Cross-border (Article 9 11 12 and 14)**

The current IORP II directive ensures that IORPs can conduct cross-border operations effectively. The limited cross-border activity is largely due to the significant differences between national tax laws and social and labour legislation, as well as the cultural characteristics of the Member State.

We are in favor of the Commission's proposals concerning the facilitation of the authorization and supervision by home and host authorities, the simplification of transfer rules and the possibility for temporary underfunding of IORPs. We believe that these proposals are positive steps and will facilitate the activities of the cross-border IORPs.

Nevertheless, domestic transfers should remain an issue for the Member States given the minimum harmonization nature of the IORP directive. As a result, Article 12a should be deleted.

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

#### **9. Shift from DB to DC (Article 33 44a 44b and 50)**

While the proposals might address theoretical risks, they do not necessarily address the unique characteristics of various national schemes. EU regulation should therefore provide sufficient flexibility for Member States and NCAs.

Concerning the long-term risk assessments, PensionsEurope believes that the ORA's legitimate

emphasis is on the risks that the IORP is subject to and those that affect its members and beneficiaries. Therefore, we believe that there is no need to implement any change at the European level. Moreover, since some Member States already require IORPs to carry out similar assessments, the detailed provisions set out in art. 44b(2) would risk triggering inconsistencies and overlaps with national frameworks.

In the case of IORPs where members cannot select their investments, the risk preferences of members are adequately expressed by their representatives, who 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, which we continue to support instead of the prudent person principle, factors like member characteristics, future contributions and statutory pensions are already factored in. We stress that if any long-term risk assessments are finally introduced, those need to be principles-based to leave leeway for Member States to choose approaches that provide actual benefits in their respective national context. The prudent person rule should therefore be properly considered.

Concerning the professional depositary, PensionsEurope believes that the existing directive already allows the appointment of depositaries where necessary and we see no need to change.

#### **10. Complaints procedures (Article 44c and d)**

The revisions that are proposed already exist in many Member States. We believe that the scope of issues that may be sent in the complaint's procedure and for Alternative Dispute Resolution should not be extended. The directive should not extend entry into judicial procedures beyond what stems from national law.

#### **11. Activities of an IORP**

PensionsEurope does not support the new requirement to ring-fence the assets and liabilities corresponding to an IORP's "personal pension provision business". That provision is not fit for DC schemes where members have segregated individual accounts. Moreover, this provision also contradicts the Commission's goal of promoting the growth of IORP assets through asset pooling.

#### **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 **21 member associations** in 16 EU Member States and 3 other European countries<sup>1</sup>.

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<sup>1</sup> EU Member States: Austria, Belgium, Bulgaria, Croatia, Finland, France, Germany, Greece, Hungary, Italy, Lithuania Luxembourg, Portugal, Romania, Spain, Sweden. Non-EU Member States: Iceland, Norway, Switzerland.

PensionsEurope member organisations cover different types of workplace pensions for **over 65 million people**. Through its Member Associations, PensionsEurope represents over **€ 2,5 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 **13 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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