



***PensionsEurope's updated position paper on the
IORP II review.***

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Executive summary

PensionsEurope advocates adequate and secure pensions for all European citizens. We are confident that IORPs can and should play a significant part in providing these. The 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.

➤ **Governance and prudential standards**

- EIOPA believes that the right approach to enhance proportionality is to increase the threshold for the small IORPs exception to below both 1,000 members and beneficiaries and EUR 25 million in assets in total with a grandfathering clause. On the one hand, some members of PensionsEurope do not believe that excluding so many IORPs from the scope of EU-legislation would be appropriate as it could put into question the legitimacy and added value of the Directive. On the other hand, other members believe that the implementation of IORP II and various horizontal financial services legislations that are imposed on IORPs, entailed a significant and unwarranted financial burden for them.
- EIOPA believes that the right approach is the reformulation of proportionality provisions to ensure a risk-based approach and that the criteria 'size' and 'internal organisation' of the IORP should be removed. Size and internal structure requirements can be very important for the proportionate application of the directive. Their removal will lead to less flexibility in implementation for IORPs and National Competent Authorities and to more administrative burden.
- EIOPA recommends that IORPs and National Competent Authorities have insight into material liquidity risks, including in respect of cash margin calls on derivative exposures. Any potential amendments to IORP II concerning liquidity risks should follow a principle-based approach, leaving the implementation of any extra requirement up to the national level. Therefore, an Opinion by EIOPA is highly preferred over guidelines because it gives adequate flexibility for NCAs.
- EIOPA advocates changes to various articles to protect members and beneficiaries from potential conflicts of interest between IORPs and service providers. National legislators may be in a better position to adopt any additional measures that specifically address the risks highlighted proportionately and efficiently.
- PensionsEurope is extremely satisfied that EIOPA does not advise any change to the IORP II Directive concerning the introduction of a Standardized Risk Assessment. This is a core issue for pension funds and this needs to be taken into account during the upcoming review.

- EIOPA recommends enhancing the quality of the Own Risk Assessment (ORA), and the IORP's risk management in general, by supplementing the ORA requirements. Each IORP should remain free to choose the organisational structure that best fits its internal structure and risk profile.

➤ **Cross-border activities and transfers**

- EIOPA advises requiring authorities to perform a prudential assessment as part of the registration or authorisation process. Given the limited cross-border activity, the lack of a prudential assessment does not indicate to be a major problem that needs to be regulated at the EU level for the time being.
- EIOPA advises the introduction of a uniform EU definition for the members' majority of cross-border transfers. The approval should be related 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.
- EIOPA aims to further develop and enhance the current cooperative environment between National Competent Authorities. Any efforts on the part of EU institutions to facilitate and/or promote cross-border activities must in no way negatively affect non-cross-border IORPs.

➤ **Information to members and beneficiaries and other business conduct requirements**

- EIOPA recommends amendments to implement requirements for the design of the Pension Benefit Statement (PBS). Member States should be able to determine their own pace and direction of any change. IORPs should have greater flexibility in how they line and target information. Moreover, there is no need to include further information about sustainability in the PBS. The PBS informs already about where to obtain the necessary information.
- EIOPA advocates the inclusion of additional information to the minimum content of the PBS. Making the PBS longer would make PBS less understandable and less usable by the members and beneficiaries.
- EIOPA recommends amendments to the requirements concerning the availability and medium of the PBS. Considering technological change, Member States should have the freedom to determine whether and how to use synergies between the Pension Tracking Services (PTS) and the PBS.
- EIOPA recommends introducing the requirements on cost transparency based on its own Opinion. In the context of limited or no choice for members and beneficiaries in pension schemes, the proposed cost transparency seems less relevant. Implementing the proposal would present difficulties in general.
- EIOPA recommends requiring the use of projections where applicable in the information to prospective members and during the pre-retirement phase. Scenarios on which projections are based 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 pension schemes they do not offer.

- EIOPA recommends introducing a new provision establishing a duty of care principle. The protection of members' interests is in most pension funds already sufficiently safeguarded within the pension funds' paritarian governance structures. There is no need for the introduction of duties of care.

➤ **Shift DB to DC**

- EIOPA advises that, for schemes in which members and beneficiaries bear material risk, IORPs should enact long-term risk assessments from the perspective of members and beneficiaries. While the proposals might address theoretical risks, they might not necessarily address the unique characteristics of various national schemes. EU regulation should therefore provide sufficient flexibility for Member States and NCAs.
- EIOPA also advises that NCAs require IORPs to report on an annual basis information on all costs and charges of schemes where members and beneficiaries bear risks. Greater cost transparency in the supervisory reporting would not necessarily enable national supervisors to evaluate IORPs' cost-effectiveness and the value provided to members and beneficiaries more effectively. IORPs are by nature very cost-efficient. This new reporting will only add an extra administrative burden.
- EIOPA advises the introduction of a principles-based requirement for IORPs to have transparent complaints and ADR procedures. The directive should not lead to extending the entry to judicial procedures beyond what stems from national law.

➤ **Sustainability**

- EIOPA advises introducing new requirements for considering sustainability risks in investment decisions and considering the adverse impact of their investments on sustainability factors. IORP II should focus on financial risks related to the depreciation of assets due to regulatory change. This should not include factors like reputation risk, which is hard to measure and makes participants' preferences less important than those of external stakeholders.
- EIOPA proposes that scenario analysis would become mandatory for all IORPs. Many IORPs would find it extremely difficult and burdensome to implement Solvency II requirements even with added support and service providers. Requirements should be defined in such a way that they can be implemented for all IORPs with an appropriate cost-benefit ratio.
- EIOPA advocates integrating sustainability preferences when IORPs can gauge the sustainability preferences of their members and beneficiaries. IORPs already have the appropriate governance structures to assess the sustainability preferences of members. Irrespective of the sustainability preferences, diversification should always remain the investment policy's priority.

- EIOPA advises that IORPs should consider a stewardship approach to address sustainability risks in a proportionate manner. The Shareholder Rights Directive II already introduces stewardship requirements through the “comply-or-explain” approach. EIOPA’s advice seems to be an avoidable duplication, leading to unnecessary costs.
- EIOPA advises raising awareness of the extent to which Member States can take active steps to reduce the gender pension gap. The gender pension gap is a major problem which it is a result of the labour market and other conditions that have an impact on pension benefits. Therefore, the gender pension gap is a task for pension policy. It is out of the scope of IORP II as it legislates about the pension institution and not the pension scheme.

➤ **D&I**

- EIOPA recommends that D&I are one of the criteria for the composition of management bodies. D&I should also be addressed in recruitment policy more generally. The fitness of potential board members is fundamental, and it should always be the primary factor to be considered. Any potential binding legislation on D&I considerations in the appointment of members of the management and supervisory bodies of IORPs can become harmful, and this can be reflected in the future benefits of members and beneficiaries.

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.

On the 28 September 2023, EIOPA published its advice on the IORP II review. The European Commission will evaluate this advice and it is expected to start working on the file and present its proposal during the next legislative mandate.

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.

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 law, 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.

PensionsEurope acknowledges 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. For this reason, before the upcoming review, we believe that a proper cost assessment as part of the impact analysis needs to be conducted in order to avoid a disproportionate cost increase falling on all and especially smaller IORPs.

Chapter 2. Governance and prudential standards

Proportionality

PensionsEurope believes that proportionality in the IORP directive poses several difficulties, such as:

- 1) Frequently, proportionality is applied by national supervisors by only focusing on IORP size. Other characteristics such as the nature, scope, and complexity of their operations are ignored in many cases.
- 2) How IORP-specific legislation has been implemented by Member States and how NCAs have overseen them has not always been aligned.
- 3) IORP directive does not consider adequately the collective agreement model of some countries. In those systems, the social partners, or their joint representatives, have a unique and independent role in the administration of occupational pensions. They function as an independent link between employers, employees and the governing body of 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 the proportionate application of the directive.

Based on the proposals of EIOPA in its advice, we estimate that only a limited number of changes will be proposed. This might be a missed opportunity.

We believe that the revision of the IORP II directive needs to thoroughly consider 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 kind of directly applicable regulation should be conditional to a positive impact assessment and otherwise a principles-based approach, which takes into consideration the IORPs' particular role and characteristics, would be more appropriate.

In general, PensionsEurope believes that paying more attention to the aims behind requirements may open possibilities for proportionality. As an example, we would like to mention the PBS. In a context of compulsory participation and often little or no choice/options, a PBS should not include information on which members cannot act. However, a minimum level of information set by the IORP directive should be made easily available to members, beneficiaries and other stakeholders.

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 EU wide minimum standards.

Finally, we observe that the NCAs frequently interpret EIOPA's Opinion as binding EIOPA Guidelines. At the same time, according to a survey conducted by EIOPA, ten Member States have not implemented proportionality measures for any of the IORP II provisions. This often leads to expensive and complicated regulations that are not aligned with the pension system of a given member state and result in excessive costs that either have a direct (and adverse) impact on citizens' retirement outcomes or an indirect impact by adding to sponsors costs to the detriment of the EU growth agenda. The task of EIOPA Opinions is not to achieve an EU-wide convergence of IORP rules based on an EU minimum harmonization Directive. Therefore, as PensionsEurope, we would favour the introduction of a clarification in the EIOPA Regulation to mitigate this NCA's inclination.

- Small IORP exemption in Article 5

EIOPA believes that the right approach is to increase the threshold to both 1000 members and beneficiaries and EUR 25 million in assets in total with a grandfathering clause. It limits the percentage of IORPs that could potentially make use of the small IORP exemption to 32%. This number can change due to the current developments in some MSs such as Ireland in which we observe the consolidation of small IORPs.

We believe that 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.

On the one hand, some of PensionsEurope's members do not believe that excluding so many 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, other members of PensionsEurope hold the view that the implementation of IORP II entailed a significant and unwarranted financial burden for IORPs. 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 25 million in assets would be an improvement.

- Risk-based proportionality formulations

In its advice, EIOPA believes that the right approach is the reformulation of proportionality provisions to ensure a risk-based approach and the references 'size' and 'internal organisation' of the IORP would be removed. According to EIOPA, some small, but high-risk IORPs may experience an increase in costs to comply with the governance and prudential standards in IORP II, but that would be justified based on their risk profile.

We disagree with the proposed restriction of the applicable criteria. 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. Many IORPs in Europe are operated on a non-profit basis by the social partners or are set up by sponsoring companies. Their only purpose is to provide adequate pensions for the members and beneficiaries. Members and beneficiaries are typically represented in the IORPs' committees, thereby guaranteeing the institution acts in their best interest. If

proportionality measures were no longer applied to these IORPs, there would be no consequential change their business practices, but would only lead to additional administrative burdens.

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 criterion. 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.

- Low-risk profile IORPs subject to proportionality measures

EIOPA advises not to introduce the concept of low-risk profile IORPs into the IORP II Directive, considering that the IORP II Directive already allows Member States to apply a proportionate approach through the small-IORP exemption and principle-based rather than precise requirements. We share this general reasoning of EIOPA. 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 ability to introduce those.

Liquidity risk

EIOPA recommends that IORPs and NCAs have insight into material liquidity risks, including in respect of cash margin calls on derivative exposures. EIOPA proposes to issue guidelines or an opinion on the supervision of liquidity risk about IORPs with material liquidity risk.

The risk-management system is already required to 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. We acknowledge the issue's significance in the present context. However, we believe that any potential amendments to IORP II should follow a principle-based approach, leaving the implementation up to the national level. Therefore, an Opinion is preferred over Guidelines.

Conditions of operation and conflicts of interest

EIOPA advocates changes to various articles to protect members and beneficiaries from potential conflict of interest between IORPs and service providers. EIOPA recommends making amendments to the IORP II Directive in the following articles:

- Article 6 (20) "service provider" means an undertaking providing services to an IORP.
- Article 9 (registration or authorization)
- Article 10 (operating requirements)
- Article 21 (general governance requirements)
- Article 22 (requirements for fit and proper management)
- Article 31 (outsourcing)
- Article 49 (supervisory review process)
- Article 50 (information to be provided to the competent authorities)

Only a small portion of pension service providers could be affected by the issue identified by EIOPA. In the case of large services providers in many member states there is the following safeguard. Their

shareholders are directly or indirectly IORPs themselves, or members and beneficiaries. In practice, IORPs play an important role in the governance of these pension service providers. Therefore, EIOPA's proposals would unnecessarily apply to the whole sector.

We agree that there may occasionally be reasons for EIOPA and NCAs to be concerned. For example, firstly the influence of service providers setting up IORPs may result in these service providers having much more influence over the operation of these IORPs than is the case for traditional IORPs and secondly the link between sponsors and IORPs may be less strong than in traditional IORPs.

However, the definition of "service provider," articles 21-6, and article 31 as they are currently written in the Consultation Document are too vague and increased requirements would adversely affect IORPs where there is no question of the identified conflict risk.

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.

Effective use of data

EIOPA recommends amending the IORP II Directive in order to specify that competent authorities should have the necessary powers and means to request regular quantitative reporting from IORPs. For that purpose, the following point should be added to Article 50 (Information to be provided to the competent authorities):

(aa) require IORPs to submit regular quantitative templates specifying in greater detail and supplementing the information presented in the reports specified in points (c) and (d). This shall also include all regular information requested by EIOPA necessary to carry out its duties.

NCAs 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 increase disproportionately. So that the reporting costs can be justified, supervisors should have a clearly defined and communicated purpose for gathering data and any extension of information requests should be made only when justified in a detailed cost/benefit analysis.

We believe that the Directive's recital could state that NCAs and EIOPA should be cautious when gathering data and accompanied by an explicit aim of minimizing and, where possible, reducing reporting costs for IORPs. We are generally against the introduction of technical standards into the IORP Directive because of the importance of NCAs, the heterogeneity of pension systems and the requirement for minimum harmonization. PensionsEurope appreciates that EIOPA does not advise implementing this type of policy.

Standardized Risk Assessment

PensionsEurope is satisfied that EIOPA does not advise any change to the IORP II Directive concerning the introduction of Standardized Risk Assessment.

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

We advise the European Commission and the other relevant institutions to abstain from reiterating EIOPA's advice 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 IORPs 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, 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. 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 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 (iv) its execution is too expensive. Contrary to 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

Definition of Sponsors

EIOPA considers the current definition of sponsor to be broad enough to encompass undertakings or other bodies, including professional associations or bodies, where, according to the organisation of the national pension system, such associations or bodies are allowed to offer pension schemes.

We disagree with this approach. PensionsEurope supports including 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" pension schemes, that cannot lead to them being considered sponsoring undertakings. We advise caution concerning the proposed wording for any new definition as it could be interpreted in a way that is not intended.

Investment rules relating to markets

In its advice, EIOPA proposes expanding the definition of regulated markets with equivalent markets in third countries and affording Multilateral Trading Facilities (MTFs) and Organised Trading Facilities (OTFs) with the same treatment. For that purpose, according to EIOPA, point (14) of Article 6 (Definitions) should be amended and point (1)(d) of Article 19 (Investment rules) should be changed.

PensionsEurope is 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 widest range of regulated markets and trading platforms possible. It is our belief that this amendment to the directive would have no discernible drawbacks and provide IORPs and supervisors with legal certainty and consistency.

Own-Risk Assessment (ORA)

In the advice, EIOPA recommends enhancing the quality of the ORA, and the IORP's risk management in general, by supplementing the ORA requirements with principles for an ORA policy and the consideration of the IORP's risk tolerance limits. For that purpose, paragraph 1 of Article 28 (own-risk assessment) should be supplemented.

PensionsEurope disagrees fundamentally with those proposals. We believe that 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. Moreover, we believe that the current IORP II requirements are sufficient and appropriate concerning the risk tolerance limits. We see no need for IORP II requirements being further developed. Many MSs already have this provision in place at the national level. The potential next step 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 disagree with 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.

Miscellaneous

We believe that the IORP II Directive could provide more clarity about the obligation of IORPs to maintain regulatory own funds in cases where their members and beneficiaries fully carry biometric risks themselves (as collectively), 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 provide a 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 a third party (including a sponsor of an IORP) e.g., joint venture investments. For example, if an IORP enters into a joint venture with other investors to purchase a real estate or infrastructure asset, an increasingly 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.

Furthermore, we believe that two further suggestions for investment rules should be implemented in the upcoming review.

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 were 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

Prudential assessment within the process of registration.

At this part, EIOPA advises a change to Article 9 of the IORP II Directive requiring competent authorities to perform a prudential assessment as part of the registration or authorisation process of all IORPs.

PensionsEurope believes that 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 unforeseen 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 the EU level for the time being.

Cross-border transfers

At this part, EIOPA advises the introduction of a uniform EU definition for the majority of cross-border transfers in Article 12(3)(a) of the IORP II Directive.

Concerning this point, we have a major disagreement with EIOPA's proposal. 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, labour, and tax laws. On the issue of majorities, we stress 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 in favour 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.

Notification procedures and other frameworks

EIOPA aims to further develop and enhance the current cooperative environment, particularly through the BoS Decision on the collaboration of NCAs about the application of the IORP II Directive. EIOPA expresses its commitment to further promote the internal market for IORPs and to explore cross-border issues and possible directions in offering solutions to these encountered issues. EIOPA also advises that the EC should explore frameworks beyond the IORP II Directive that may offer more potential to grow the internal market.

We believe that 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, we would like to stress that any efforts on the part of EU institutions to facilitate and/or promote cross-border activities must 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.

PensionsEurope agrees with EIOPA's recommendation for "...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 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, 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.

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

Pension Benefit Statement

EIOPA recommends amendments to Article 38 of the IORP II Directive implementing Principles-based requirements for the design of the PBS while taking into account the characteristics of the pension schemes (e.g. DB, DC)) and introducing requirement for Member State level standardisation of the format, unless a relevant Pension Tracking System is in place, taking into account the characteristics of the pension schemes (e.g. DB, DC)). In addition, EIOPA recommends that the PBS should be designed with a behavioural purpose. Member States and IORPs should engage with communication

and behavioural finance experts when designing the PBS. This principle could be reflected either in the recitals or in Article 38.

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 for savers to understand (e.g. SFDR templates). 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.

In general, 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.

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.

Information in the PBS on sustainability factors

EIOPA recommends drawing attention to sustainability issues within the PBS in a way that is consistent with the information disclosed under SFDR. This could be done by including at least a cross-reference in the PBS to the information disclosed under SFDR.

PensionsEurope believes that 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 behavioural and communication research should guide effective communication. According to behavioural 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 of providing an overview of retirement income.

Other considerations regarding the contents of the PBS

EIOPA advocates the inclusion of additional information items regarding the minimum content of the PBS set out in Article 39 of the IORP II Directive. We believe that making the PBS longer would go 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.

EIOPA proposes to add several principles regarding the structure and format of the PBS. One of the changes is that the information contained in the PBS is "accurate, updated, consistent with the choices made and complete" (underscored is proposed change). The addition that information should be complete will lengthen the PBS and could be complex to supervise by NCAs. The term "complete" implies that all information should be placed on the PBS. We oppose this amendment and instead argue that all relevant information should be on the PBS, not all information. (or the amount of information that would qualify as "complete")

We believe that the PBS is already unnecessarily extended, and its content is in some cases not easily 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 much, if not 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 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 make investment decisions. But also, the proposed amendments and new requirements in the advice would be practically hard to fulfil and increase the length and complexity of pension benefit statements.

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.

We believe that PBSs 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.

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.

Digitalisation

EIOPA recommends amendments to the requirements concerning the availability and medium of the PBS in Article 38(3) of the IORP II Directive to ensure this is the case. EIOPA additionally advocates introducing requirements regarding the appropriate choice guidance and overall presentation of information and enhancing synergies between the digital format of the PBS and other online communication tools which are not mutually exclusive with each other.

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) may become even less relevant than today. 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 the 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. Such requirements are rarely relevant as members and beneficiaries in most cases do not have any choice. The governing bodies of IORPs should have the opportunity to organize communication in the most cost-effective way to their members and beneficiaries.

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

Transparency on costs and charges

EIOPA recommends developing the provisions on cost transparency and amending Article 39(1)(g) and Article 41(2) and (3) of the IORP II Directive to implement this policy.

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 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. We believe that doing so would present a misleading impression of costs.

There could be further challenges in showing investment costs in monetary terms, 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 the 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.

Information on projection and on past performance

EIOPA recommends requiring the use of projections where applicable in the information to prospective members and during the pre-retirement phase and amending Articles 37, 39, 40, 41 and 42 of the IORP II Directive and the inclusion of a new provision.

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 wish to see any changes to 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.

Moreover, we believe 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.

Other business conduct requirements

EIOPA considers that the benefits of introducing requirements regarding appropriate structuring and implementation of schemes outweigh the costs, given the importance of pension schemes reflecting the interests, characteristics, needs and risk profile of their members and beneficiaries.

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 prescribe 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.

To sum up, 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, labour, 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.

Duty of care

EIOPA recommends introducing a new provision in the IORP II Directive establishing a duty of care principle.

In general, 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. Many pension schemes have already 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 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.

Chapter 5. Shift from Defined Benefit to Defined Contributions

EIOPA advises that, for schemes in which members and beneficiaries bear material risk, IORPs should enact long-term risk assessments from the perspective of members and beneficiaries to better address their needs and expectations.

In general, 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 proposals might address theoretical risks, they might not necessarily address the unique characteristics of various national schemes. Therefore, we believe that there is no need to implement any change at the European level. If any amendment to the IORP Directive is proposed, it should be written in a way that allows national

legislators and NCAs to adopt strategies that 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, 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, 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. 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.

In this part, EIOPA also advises that NCAs require IORPs to report on an annual basis information on all costs and charges of schemes where members and beneficiaries bear risks, according to the principles, and with the definitions and templates set out in EIOPA's Opinion on the supervisory reporting of costs and charges.

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, such as external management costs and fees in funds, should be reported, but there should not be any requirement to report indirect transaction costs by the sponsor. 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.

Finally, EIOPA advises the introduction of a principles-based requirement for IORPs to have transparent complaints and Alternative Dispute Resolution (ADR) procedures.

On this issue, we believe that any change 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.

Chapter 6. Sustainability

Integration of sustainability factor in investment decisions

EIOPA advises requiring IORPs to take into account sustainability risks in investment decisions, and in so far as it is relevant for that purpose, to take into account the adverse impact of their investments on sustainability factors.

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. For this reason, we fear that the proposed introduction of the duty to take into account sustainability risks in investment decisions could expose IORPs without any reason to potentially unfitting definitions of “sustainability risks” that are likely to be developed.

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.

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 in a way that 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 incorporate 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 advocates the alignment of definitions of sustainability risk with the SFDR, a framework already familiar to IORPs.

Fiduciary Duties

EIOPA advocates integrating sustainability preferences when IORPs can gauge the sustainability preferences of the members and beneficiaries. EIOPA can issue guidelines to address the issues that IORPs encounter in different cases depending on the type of schemes or any other specificity. For this purpose, EIOPA advises to amend Article 19 of the directive.

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 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 the 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.

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 allowed 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 making 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.

In general, 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 support the idea 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.

Sustainability preferences

While we think that a principle-based requirement on the incorporation of sustainability preferences is possible, we disagree with the proposal to lay down a definition of "sustainability preference" in line with Article 1(55e) of Commission Delegated Regulation (EU) 2015/35. 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 pension funds should be required to use this narrow definition, which is based on concepts that members are not aware of or 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 decent understanding of the relevant context by members and beneficiaries.

We understand from financial entities that do have to implement the Solvency II definition that the definition either leads to confusion or sustainability preferences that are incompatible with diversification principles (e.g. a preference for 100% Taxonomy-alignment or 100% sustainable investments). Finally, the definition of sustainability preference in Solvency II has been laid down in the context of a distribution process, whereas the participant will already be enrolled.

Stewardship

EIOPA advises that IORPs should consider a stewardship approach to address sustainability risks in a proportionate manner, by way of engaging with investees to support the transition towards more sustainable business activities in a consistent way to comply with investment principles and serve members' and beneficiaries' best interests.

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 advice 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.

Broader Societal Goals

EIOPA advises raising awareness of the extent Member States can take active steps to reduce the gender pension gap, which also impacts the social aspect of sustainability.

The gender pension gap is a societal problem. It is mainly a result of the labour market conditions. The IORP does not affect whether the employment relationship continues, what is the content of the employment relationship (e.g. part-time) 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. However, if any specific actions can be taken by IORPS to narrow the gender gap, this should be done.

Miscellaneous

Relevant EU institutions 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 Principal Adverse Impacts(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, EU institutions should think about how to prevent unintended spillover 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.

We welcome that EIOPA has explicitly mentioned our concern that the adaptation of the prudent person rule may have implications for the implementation of the SFDR. EIOPA concludes that the proposal should not lead to the automatic loss of the opt-out for reporting adverse impacts under Article 4 SFDR or an automatic classification as Article 8 SFDR. We urge the European Commission to investigate the potential link between the pieces of regulation and to proceed with the proposed amendment in IORP II only when it is concluded that there is indeed no implication for the SFDR.

The balance should be reconsidered between on the one hand changes focussing on proportionality and, on the other hand, revision on sustainability if this considerably raises administrative burdens on small IORPs.

Chapter 7. Diversity and Inclusion (D&I)

EIOPA recommends that diversity and inclusion are one of the criteria for the composition of management bodies. Moreover, diversity and inclusion should also be addressed in IORPs' recruitment policy more generally. Finally, EIOPA advises amending Article 21 of the IORP II Directive to include "Member States shall require IORPs to regularly report to the competent authorities the policy promoting diversity and inclusion on the management or supervisory body and its objectives"

PensionsEurope welcomes the intention 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 fulfil 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 include 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.

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.

Finally, 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.

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 **24 member associations** in 18 EU Member States and 3 other European countries¹.

PensionsEurope member organisations cover different types of workplace pensions for approximately over **90 million people**. Through its Member Associations PensionsEurope represents approximately **€ 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 **18 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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¹ 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.

