



Association Européenne des Institutions Paritaires

European Association of Paritarian Institutions

IORP II Review

AEIP position on EIOPA's Technical Advice on the IORP II Review

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European Association of Paritarian Institutions (AEIP)

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Foreword: key message from paritarian IORPs

We applaud EIOPA for the productive communication and constructive dialogue throughout the process of drafting the Technical Advice (the Advice) on the IORP II review. Overall, we appreciate that EIOPA does not foresee changes to the minimum harmonization character of the IORP II Directive and is imperative that to continue upholding the principles of subsidiarity and proportionality, there should be no provisions for delegated acts. Also, we support that the Advice does not recommend harmonization of solvency rules across IORPs in the same way as for insurers and banks. The current prudential rules guarantee a high-level degree of security, while allowing adaptation to national circumstances. The second pillar, and its regulation, should always be conceptualised in conjunction with the first pillar and the broader pension and social security system.

EIOPA has devoted a lot of space and attention to issues that do not fall under the triangular relationship/paritarian IORPs. In some areas, EIOPA treats IORPs as normal financial institutions and does not acknowledge that the paritarian governance model serves to align the interests of the pension fund and participants. Thus, we have the impression that the role of social partners is not well recognised in the Advice. In our view, it is crucial that the concepts fit the vast majority of IORPs. Also, the review should adopt a principle-based approach and support proportionality principle to respect the unique nature of IORPs and their heterogeneity.

In the review the European Commission must underline that paritarian IORPs are inherently different from other financial market entities. Paritarian institutions, in most cases, operate as 'not-for-profit' entities, fulfilling a crucial social role in ensuring adequate social protection. Paritarian IORPs do not engage in product sales but rather serve members and beneficiaries with retirement benefits as defined by collective agreements. Mandatory affiliation based on employment relationships, regulated, and protected by national social and labour laws, further distinguishes paritarian institutions. Another key distinct aspect is that supplementary pension schemes managed by IORPs embody the principle of solidarity. According to the Court of Justice of the EU (CJEU) this principle derives from the fact that there is an obligation to accept all the workers in the schemes (i.e. due to mandatory affiliation) without prior approval or examination (i.e. health issues examination).¹ The principle of solidarity is also apparent from the absence of any equivalence, for individuals, between the contribution paid, which is an average contribution not linked to risks, and pension rights, which are determined by reference to an average salary.

AEIP underlines that the inclusion of social partners leads to better pension adequacy and long-term commitment to capital-funded pensions. Moreover, where benefits are not guaranteed, social partners often play a role in defining a pension benefit ambition and annually calibrate pension contributions against this ambition. Undermining the role of social partners would lead to an individualization of pensions, which – due to well-documented behavioural biases such as short-termism – would erode pension adequacy. Such fundamental distinctions between paritarian institutions and pure financial market entities must be recognized and reflected in horizontal regulatory frameworks as well.

¹ See for instance CJEU: Case C-67/96 Albany International BV/Stichting Bedrijfspensioenfonds Textielindustrie, Joined Cases C-180/98 to C-184/98 Pavel Pavlov and Others, Case C-115/97, C-117/97 Brentjens, Case C-159/91 and C-160/91 Christian Poucet.

In the past years, the regulatory burden on IORPs has increased significantly due to the 2016 review of the IORP Directive and applicable horizontal legislation such as sustainable finance legislation and DORA. In the Advice (p. 32) EIOPA mentions that *'the number of IORPs is declining annually due to consolidations'*. This continuous decrease in the number of IORPs makes us believe that as a guiding principle any changes to the IORP II Directive should aim to reduce costs and reduce reporting requirements. This is important to support the development and establishment of IORPs, especially in countries where there are none so far. The adoption of a one-size-fits-all approach does not work for the IORP sector.

The Advice moves in the opposite direction, by imposing unnecessary administrative and reporting obligations on all IORPs. We emphasise that for some of our members (particularly for small and medium-sized IORPs) it could be very challenging to implement any additional disclosure requirements that will inevitably increase costs for reporting and supervision. Such increased costs are detrimental for the members' benefits, as they destroy the affordability for many sponsors to organise an adequate pension scheme.

AEIP emphasises that Member States should create or maintain a pension-friendly legal environment encompassing social, labour, and tax laws, along with an appropriate prudential framework. Both the EU and Member States should actively strengthen, and support developing adequate and sustainable pension systems and encourage collective bargaining to foster the development of occupational pensions in a cost-effective way. Such approach must acknowledge the diverse architectures of the Member States' pension systems, recognizing that there is no one-size-fits-all solution. Consequently, it is crucial to carefully assess the cost implications of the proposed amendments to IORP II, not just for each change individually but also in aggregate. Therefore, prior to the forthcoming review, we recommend carrying out a comprehensive cost assessment as part of the impact analysis, to prevent an undue burden of increased costs, particularly for smaller IORPs.

Executive Summary: main takeaways and recommendations on EIOPA's Technical Advice on the IORP II Review

Governance and prudential standards

We welcome that the Advice considers venues to enhance proportionality, but we urge not to restrict National Competent Authorities (NCAs) from using size and internal organisation criteria when applying proportionality. Such criteria can provide legal certainty and predictability for IORPs and encourage a consistent approach, for instance 'size' can be easily assessed and quantified. While we recognize that increasing thresholds for exemptions can benefit small IORPs, we caution against a situation where the IORP II Directive will become applicable only to larger IORPs.

On liquidity risk management we agree that NCAs should oversee whether EU IORPs with significant derivative portfolios can meet margin requirements. To best achieve this, we suggest that EIOPA should draft an opinion over guidelines. On the topic of supplementing the Own-Risk Assessment (ORA) requirements with principles for an ORA policy and the consideration of the IORP's risk tolerance limits we underline that we do not see compelling reasons for further regulation on this subject. Such measures shift the IORP framework into the direction of the Solvency II framework and fail to consider the unique nature of IORPs.

Cross-border activities and transfers

It is clear to all that cross-border activities of IORPs have not taken off significantly since the introduction of IORP II. The main challenge lies in the fact that it is still necessary to follow the social, labour and tax law of the host countries. We strongly believe that it is excessive to require the harmonization of social, labour or tax regulations in order to cater to the very small percentage of IORPs that cater on a cross-border basis. Moreover, IORPs typically outsource administration and investment activities to providers that are able to operate cross-border and therefore are able to benefit from competition and economies of scale. The review should identify which issues can be addressed with cross-border IOPR activity for members and beneficiaries and assess the need for amendments in that context. Cross-border activity should be a means to end, not an end to a means.

Any actions on the matter should never harm non-cross-border IORPs and their members' and beneficiaries' trust in their schemes and importantly not through interfering with national social labour law or tax law (social partners cannot operate cross-border, as social and labour law are national competencies; and the pension of their joint institutions (IORPs) cannot (or can hardly) be offered in a cross-border dimension).

Information to members and beneficiaries and other business conduct requirements

This chapter was flagged as the topic with the highest concerns from our members. Overall, the Advice suggests adding more information on the pension benefit statement (PBS).

AEIP supports transparency and agrees with EIOPA that the quality and readability of information made available also contributes to public trust in the pension sector. However, we question whether introducing more information on the document aligns with the main goal of the PBS which according to EIOPA is *'to provide an overview of retirement income provided by IORPs in order to improve the adequacy of savings'* (see EIOPA Report on the PBS, 2018, p.6). The proposed information is very technical in nature, such as the SFDR classification and three information points on costs (monetary costs, the expense ratio and projected impact on pension savings). Moreover, for most members and beneficiaries represented by AEIP's members, this information is not actionable. Providing a lot of technical information on which members cannot act will not engage, but rather disengage, members.

Additionally, the Advice mentions in p. 116 that NCAs have not conducted systematic evaluations of the functioning of the PBS due to the relatively short time frame since the national transposition. On the same page it is mentioned that overall NCAs' evaluations of the functioning of the PBS are slightly positive. As regards ways to improve the effectiveness of PBS, a couple of Member States consider that the PBS is already detailed, and the inclusion of substantial further information would raise more challenges related to its design and comprehensibility. The issues reported included that the member or beneficiary sometimes do not know where to find specific information in the PBS, and that the information may be too long (Advice, p.117). Moreover, EIOPA has not included the systematic review of pension communication that was conducted in the Netherlands and rated the PBS as less effective than the pension tracking system and the websites of pension funds.

Against this background, to enhance communication with members and beneficiaries, AEIP proposes granting more freedom to pension funds in delivering layered information; we would rather have a more principles-based approach. Moreover, fostering and supporting the development of digital tools is crucial. National pension tracking systems (PTS) should also play a larger role as facilitators of the PBS. In principle, in our view the PBS should include only relevant information on pension benefits at personal level, and we should avoid having lengthy, complex text which would create more uncertainties than providing clear information on pensions.

Shift from defined benefit to defined contributions

AEIP acknowledges that there has been a trend towards DC pension schemes in Europe for over 30 years. However, we caution against oversimplifying this trend into a binary distinction. The commonly used definition of Defined Benefit (DB) and DC is based on how entitlements are administered (as benefits or capital), but this should not be conflated with whether members' pensions are 'protected' or not. It is entirely possible to have a DC system with sponsor support (for example, Belgium is considered a DB system in OECD definitions), or a DB system in which benefits can be adjusted (such as in the Netherlands). The latter consideration is more crucial when contemplating communication and risk management rules. AEIP would be deeply concerned if a misinterpretation of the DB and DC definitions led to inadequate regulations for IORPs.

Any review of the Directive concerning the shift from DB to DC should adhere to the principle of minimum harmonization and respect the national peculiarities of social and labour laws, as well as the role of social partners in a paritarian model. Additionally, in this part of the Advice, among other matters, EIOPA advises the introduction of a principles-based requirement for IORPs to demonstrate that their members and beneficiaries have had the opportunity to contribute in a meaningful way in the decision-making of the IORP. We feel that the formulation of contributing in a 'meaningful way' is unclear and should be further developed to take sufficient account of the role of the social partners in paritarian IORPs.

Sustainability

AEIP acknowledges the importance of integrating sustainability factors into pension fund investments and agrees that the preferences of members and beneficiaries should be considered. However, translating these preferences into a single investment policy remains challenging and cost-intensive in practice. AEIP highlights that many IORPs already have ambitious responsible investment policies. Therefore, a principle-based consideration of double materiality under the prudent person rule would align with the investment practices of numerous pension funds. Fund boards must have sufficient flexibility to accommodate various viewpoints, particularly in paritarian pension funds established through collective agreements, where investment decisions always comply with the prudent person rule.

EIOPA advice to require IORPs to consider sustainability risks in investments 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. We highlight that any new amendments must be based on a comprehensive legal analysis and clear argumentation. Another key aspect is ensuring that the definition of '*sustainability preferences*' considers the characteristics of IORPs, it would be unfavourable to rely on the definitions used in the Solvency II Regulation or the MiFID Directive.

Diversity and inclusion

AEIP fully supports diversity and inclusion in management boards. In paritarian pension funds, IORP boards are appointed by social partners, ensuring the representation of diverse perspectives and interests. The ultimate aim should be to establish a truly inclusive and diverse culture and promote good governance (i.e. fit and proper criteria for board members).

Please find at the end an annex with our concrete recommendations on EIOPA's Technical Advice on the IORP II review.

Elaborated response to EIOPA's Technical Advice on the IORP II Review

1. Governance and prudential standards

General comments on proportionality

Heterogeneity of IORPs requires proportionality to be read in the context of the minimum harmonisation principle that governs the IORP II Directive. The principle-based approach in the IORP II Directive enables Member States to consider the national frameworks and the different structures of IORPs. We believe that NCAs and national legislators are best to judge to what extent certain regulatory provisions within Member States apply to a particular type of IORPs. For instance, the Advice (p. 32) mentions that supplementary national requirements are already within the remit of national legislators. This reflects that NCAs are the most appropriate to supervise IORPs as they operate at domestic level. Still, certain IORPs (particularly small and medium) have often been subjected to burdensome requirements, with NCAs not sufficiently considering the diversity of the size, nature, scale, and complexity of their activities.

Also, in the past years, the regulatory burden on IORPs has increased significantly due to the 2016 review of the IORP Directive and applicable horizontal legislation such as sustainable finance legislation and DORA, as well as due to statistical requirements by ECB and EIOPA. Similarly, we feel that EIOPA could take proportionality more into consideration in its opinions and guidance. Consequently, we welcome the fact that EIOPA mentions in its Advice (p. 4 & p.11) that *'to promote risk-based supervision and to enhance supervisory convergence, EIOPA will consider including in its future work programmes the application of proportionality by NCAs using the convergence tools at its disposal'*. This is important as the right balance between minimum harmonization, heterogeneity and EIOPA's drive for supervisory convergence is often lost. Additionally, on a more general level we point out that a common approach that includes all the criteria currently mentioned in the IORP II Directive is needed across the horizontal EU legislation applicable to IORPs to align the requirements on proportionality and ensure a uniform approach; and the cumulative regulatory burden that derives as a result from the applicable legislation to IORPs should respect proportionality in an encompassing way (i.e. SFDR, DORA). Presently there is no common definition for the application of proportionality across the EU legislation (in horizontal legislation) that affects IORPs.

In the call for Advice, the European Commission requested EIOPA to *"particular verify whether the administrative burdens caused are justified in view of the benefits for members and beneficiaries as well as for the proper functioning of occupational pension systems and the stability of IORPs"*. This analysis is particularly important to assess the implementation of proportionality and we look forward to the results.

The review should not change the funding requirements or introduce capital requirements for IORPs as the current prudential rules guarantee a high-level degree of security. Also, it shall not lead to any unnecessary administrative costs for IORPs considering that the one size fits all approach does not work for the IORP sector. Moreover, it should be noted that the Advice does not provide any information that would allow for understanding the effects of the applicable threshold on the number of Member States in which the IORP Directive is factually regulating IORPs. Some of our members have raised concerns if the number of Member States that have a real interest in the IORP Directive would be considerably reduced.

Proportionality: Small IORP Exemption

Recommendation (on Advice 2.3.6)

Increasing thresholds for exemptions can benefit small IORPs, but we are cautioned against a situation where the Directive will become applicable only to larger IORPs, as it would quickly lose its legitimacy.

Using solvency regulation as the basis to regulate pension funds is the wrong starting point

An increase in the number of members for offering the opportunity for NCAs to be exempt could be a positive way to encourage NCA to implement more proportionality, at the same time the introduction of a criteria related with the AuM brings in a new criterion that contradict EIOPA's approach in this Advice which entails a suggestion to remove the size criteria. Leeway should be given to Member States and NCAs to translate this heterogeneity in the application of Art. 5. This new threshold is in line with the provisions in solvency regulation for insurers, thus it does not recognize the triangular relationship and role of social partners in most IORPs. IORPs are inherently different from other financial market entities. Any increase to the threshold in terms of millions in assets should consider the role of the social partners in the overall management of the IORP. Moreover, an exception should be granted in case the thresholds are increased but if so, is important to render the criteria alternative and not cumulative.

Increasing thresholds could be a key for the survival of smaller IORPs

Some of our members agree that the current threshold is low, adding that in many Member States this threshold has not been implemented into national legislation making all IORPs in that Member State subject to IORP II. Consequently, some of our members welcome an increase in the threshold as this can have a positive impact on the survival of small IORPs i.e. this can help IORPs to maintain their current situation meaning that they can continue their operations and as such this would not put in danger the pension adequacy of their members and beneficiaries. Regarding the proposed threshold for DORA and SFDR we welcome this approach as this is a step forward to better align and reach a uniform approach in terms of proportionality for IORPs. Additionally, the fact that an asset condition of EUR 50 million instead of EUR 25 million is suggested is considered as a positive development for smaller IORPs as it would be harder for them to comply with the harmonized rules introduced by DORA and SFDR.

Still increasing thresholds should not lead to a more complex environment in terms of the application of the IORP II Directive

Other members raise a concern that the threshold should not be elevated to a level that leads to a situation where the IORP Directive will no longer apply to a large part of the IORP sector and maybe several Member States factually not applying IORP anymore. This would create further divergence among the IORP sector and undermine the existence of the Directive. Additionally, we would be concerned if a case of a more complex compliance environment is created for larger IORPs, as this could create negative implications for the pension fund sector.

Way forward: the main aim should be to maintain the pension adequacy of members and beneficiaries

We will welcome further discussion with DG FISMA to further exchange on the matter, especially since the proportionality principle has an impact on the operations of smaller IORPs.

Proportionality: Risk-based proportionality formulations

Recommendation (on Advice 2.3.6)

We urge not to restrict NCAs from using size and internal organisation criteria when applying proportionality. Such criteria can provide legal certainty and predictability for IORPs and encourage a consistent approach, for instance 'size' can be easily assessed and quantified.

EIOPA advises that the governance and prudential standards are applied in a manner that is proportionate to the risk profile of IORPs and not to their size. Proportionality formulations should be restricted to the 'nature, scale and complexity'. According to the Feedback Statement of EIOPA (p. 8) 27% of stakeholders agreed, 40% disagreed, including EIOPA's OPSG, and 33% did not respond on this option. Considering the limited level of support for this option, and that almost half of the stakeholders oppose the suggested option, we find it striking that still EIOPA moves forward with its advice.

In its assessment (Feedback Statement, p. 8) EIOPA notes that *'A small size does not necessarily mean that IORPs are low risk, even though it is recognised that smaller IORPs are more likely to be low risk. Limiting the proportionality formulations to nature, scale and complexity of the activities will also encourage Member States and NCAs to have a broader perspective than just size when applying proportionality. This would support the stakeholder comments that suggested that there is now disproportionate emphasis on size.'* Moreover, in the Advice (p.4, p. 48, p. 50) EIOPA mentions 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.'* From the before mentioned, we understand that first, EIOPA recognises that smaller IORPs are more likely to be low risk. Second, size is a crucial criterion for NCAs when applying proportionality. Third, EIOPA suggests removing size to have a broader perspective when applying proportionality, but doing so narrows down the actual criteria for proportionality. Therefore, the question that arises is why EIOPA prefers to remove size rather than advice on ways to enhance proportionality based on different criteria that could ensure a broader perspective on proportionality.

Size is the easiest way to decide on proportionality, thus keeping this element is essential, it can be easily assessed and quantified i.e. it is easy to understand and measure. Size can provide legal certainty and predictability for IORPs and encourage a uniform approach and is also linked to the question of the low risk profile IORPs. Therefore, if the criteria set are not clear and subjective this could lead to a more complex situation as it would be hard if not impossible to judge if an IORP falls under the 'low or high-risk profile'. It is important to have at least one objective criterion to provide legal certainty and predictability for IORPs and to allow a uniform approach to proportionality on the European level.

While we agree that from the perspective of the participant it does not always matter how large their pension fund is, we feel size is a relevant factor in deciding the governance structure of the pension fund, and supervision. Both elements have cost implications which weigh heavier on the contributions of participants in small pension funds and thus proportionality can be in their favour. Size should be used in combination with complexity and risk profile criteria, as is currently the case. The European Commission

should not restrict NCAs from using size and organisational structure when supervising the IORPs and implementing the proportionality principle. Good internal organisation reduces the operational risk. Additionally, EIOPA in its Advice uses size to address the identified issues regarding proportionality in the option 'small IORP exemption in Article 5' and in option 'definition of low-risk profile IORPs'.

Proportionality: Low-risk profile IORPs

Recommendation (on Advice 2.3.6)

We welcome that EIOPA advises not to introduce the concept of low-risk profile IORPs into the IORP II Directive; a definition of 'low risk' is quite subjective and the criteria questionable.

We support the promotion of principles of good risk management, but not homogeneous and standardized measurement and requirements as this will go beyond the minimum harmonisation principle. Moreover, as EIOPA reports well in the Advice, the approach implies increased compliance costs for small IORPs that are currently being considered low risk because of their size and/or internal organisation. Instead, considerations on the proportionality principle should be aimed at alleviating the burden on certain IORPs.

Liquidity Risk Management

Recommendation (on Advice 2.4.5)

We agree that NCAs should oversee whether EU IORPs with significant derivative portfolios can meet margin requirements. Still, we point out that a one-size fits all approach will not suffice for the heterogeneous nature of pension funds and a principle-based regulation approach is preferred. To best achieve this, we suggest that EIOPA drafts an opinion over guidelines.

At EIOPA's follow-up stakeholder workshop on the IORP liquidity risk management, on 14 March 2024, EIOPA mentioned that it has not yet decided whether it will draft an opinion or guidelines. During the workshop a common point raised by pension fund stakeholders was the difference between the UK and the EU on liquidity risk. Also, it was pointed out that a one-size fits all perspective approach will not suffice for the heterogeneous nature of pension funds in Europe. Instead, a principle-based approach is more appropriate to uphold and further enhance a well-functioning pension fund sector. In view of the discussion in the workshop and the points below, we suggest that EIOPA draft an opinion over guidelines.

We understand that the issues pension funds in the UK faced in 2022 points the attention of EIOPA to the liquidity risk that might exist in certain IORPs. The situation in the UK has laid bare the implication of margin rules against which the pension fund sector has long been warning for. Following the UK LDI crisis, pension funds and their fiduciary managers reviewed their interest sensitivity analyses and liquidity management processes. The liquidity management of EU pension funds proved robust during the turbulence on the financial market in the COVID-19 crisis and the recent strong, albeit gradual, interest rate increases.

The level of interest rate hedging in EU IORPs is generally lower, even for the largest IORPs. Where derivative exposures of some pension funds are large, it does not nearly play the same role in the EU bond

market as the UK pension funds do in the UK gilt market. Thus, the risk of setting a negative feedback loop is smaller. Nevertheless, we underline the importance of the issue. It is understandable that legislation requires liquidity management to be integrated in the risk-management processes of pension funds. AEIP believes that NCAs should indeed oversee whether EU IORPs with significant derivative portfolios is able to meet margin requirements. The current legal framework includes an assessment for different kind of risks, including liquidity risk in the IORPs ORA.

It is important to maintain liquidity risk in line with the minimum harmonisation principle. Whereas this Advice refers to material derivative exposures, this nowhere to be found in the text. It is noted that material derivative expose varied widely across the EU IORP sector and is only substantial in a couple of Member States. National regulators and supervisors are therefore best placed to implement requirements on liquidity risk assessments. We note that the additional cost of this proposal is unclear, and a quantitative cost analysis should be carried out before introducing any measures at the EU level. However, we believe that the ORA should not solely focus on liquidity risk assessment. It is crucial for IORPs to maintain focus on processes related to other risks as well.

Conditions of operations and management of conflict of interest

Recommendation (on Advice 2.5.5)

We see no need to strengthen the conditions of operations for all IORPs as this will result in cost increases for reporting and supervision for all IORPs. We do not support the advice of EIOPA that requires all IORPs to submit a business plan. Also, we believe that if EIOPA wishes to address MIPs it should exclude sponsors from the definition of service providers.

EIOPA decided against applying strengthened rules only to Multi-sponsor IORP providers (MIPs). EIOPA, suggests amendments to Arts. 6, 9, 10, 21, 22, 31 49 and 50. We oppose this common approach for all IORPs highlighting two key differences between MIPs and paritarian IORPs. In paritarian IORPs (1) the involvement of the representatives of employees and employers in the management of the pension fund and (2) they do not have a commercial purpose since membership is affiliated on the employment relationship. This is also mentioned by EIOPA (p. 61) in MIPs '*often there is less or no involvement of sponsors, employees and members in the governance and management of these IORPs. MIPs are set up for commercial purposes (..)*'. We regret to see that the Advice does not reflect these fundamental differences.

We believe that the MIP concept is vague and give lots of room for wrong interpretation, Still, it is important to have in place a transparent framework for risk assessment in line with the minimum harmonisation principle and not through introducing changes to the IORP II. We agree that in some situations conflicts of interest may occur, for this reason Member States have in place national rules to overcome such conflicts. Potential conflict of interests needs to be properly addressed. Expert judgement of the NCAs should be used to assess this in a proportionate way. The amendments proposed by EIOPA have an impact on all IORPs and not only on the MIPs set up by services providers for sponsors that are not related. We believe that EIOPA's advice goes far beyond what is necessary to address the issue.

Observations regarding the 2017 Market development report on occupational pensions and cross-border IORPs

The 2017 Market development report on occupational pensions and cross-border IORPs (Advice, p. 59) mentions multi-employer cross-border IORPs that are set up by service providers aimed at multiple unconnected employers, and para 2.5.3 of the Advice mentions that around 12% of cross-border IORPs do not manage domestic occupational pensions in the home Member State they operate from. These 12% equals 4 IORPs that together represent less than 0,00001% of IORP assets in Europe. We see no need to strengthen the conditions of operations for IORPs as this will result in cost increases for all IORPs. Such cost increases are especially burdensome for small and mid-sized IORPs. Another hint might be the absence of serious activity in the home country because this might also raise doubts about the efforts that home NCA's of such institutions can and will take in supervising these entities. It would be a serious concern if the IORP Directive were to give rise to commercial parties providing pension schemes while engaging in regulatory arbitrage and/or by-passing social partners. In this respect, some of our members wonder whether tailored anti-abuse measures could be drafted either at the European or national level to disallow the provision of pensions by IORPs that do not provide these services in their home country.

Art. 6, Art. 9 and Art. 50

We do not support the Advice of EIOPA that requires all IORPs to submit a business plan. This will inevitably increase costs for reporting and supervision. Cost increase is particularly burdensome for small and medium-sized IORPs. If EIOPA wishes to address MIPs it should exclude sponsors from the definition of service providers (which is currently not the case); the principle of proportionality needs to be respected. We believe that national legislators are better positioned to take measures that address the risks described by EIOPA in a tailored, proportionate and effective way.

Art. 21, Art. 22 and Art. 31

We agree that there might under circumstances be a legitimate concern on management of conflicts of interest. However, the present formulation of the legislative proposals in the Advice about management of conflicts of interest is very broad and does not distinguish between MIPs and paritarian IORPs.

Effective use of data

Recommendation (on Advice 2.6.5)

Supervisors should have a clearly defined use for collecting data, to justify the reporting costs. EIOPA should further delineate the goals for collecting data, which should be generally within the role of prudential and behavioural supervision.

EIOPA recommends amending Art. 50 to specify that competent authorities should have the necessary powers and means to request regular quantitative reporting from IORPs. It is imperative that the proposed amendment to Art. 50 is met with opposition from the majority of stakeholders. They argue that it is unnecessary, as supervisors already have the authority to collect data on a regular basis (EIOPA's Feedback Statement, p.15). Overall, we emphasise that any new provisions shall not create any additional burden

to IORPs and must respect the principle of proportionality. In some Member States, for instance Germany the Netherlands and Belgium the NCAs can already collect quantitative information from IORPs.

We oppose EIOPA's advised amendment to Art. 50, stating '*require IORPs to submit regularly*' and '*including all information requested by EIOPA to carry out its duties*'. They are phrased too generally. We think it would be beneficial if EIOPA would motivate why it requests data. Upon requesting additional data, it would be good for EIOPA to publish an impact assessment that transparently outlines expected costs and benefits. Some of our members believe that EIOPA should further take into consideration the heterogeneous nature of the IORPs when requesting data as in the past for some IORPs costs of reporting was not proportionate to their operations. Still, we acknowledge the importance of collecting information for transparency reasons, NCAs' access to data can help them get a better insight into the sector, facilitating better supervision and regulation.

It is necessary to balance EIOPA's data needs with costs of reporting and consider proportionality in doing so. If data is already available at other EU supervisory authorities EIOPA should use those data before requesting additional reporting to IORPs. Also, data that EIOPA is demanding should be provided by the NCA when the NCA has already collected it from the IORP. IORP should be required to submit additional data to EIOPA via EIOPA template only when it exceeds the data already provided to the NCA via NCA template. This approach could avoid the burden for the IORP to send the same data to two different authorities in two different formats and via two different already existing communication channels. Such an approach would also align with the ambition of the European Commission to rationalise reporting requirements (for instance see the consultation on rationalisation of reporting requirements published in October 2023). We suggest that the way forward is to make reporting simple and relevant (proportional) and always consider a cost-effective approach for pension funds and their members and beneficiaries. Additionally, we are in general against the introduction of implementing technical standards in the IORP Directive, considering minimum harmonization and the primacy of NCAs.

Standardised Risk Assessment

Recommendation (on Advice 2.7.5)

We agree with EIOPA that no harmonised solvency rules should be introduced. We believe that NCAs shall not use the common framework approach and in our view a cash flow analysis is a better tool to analyse the long-term risks of an IORP since it takes into consideration the time factor.

We agree with EIOPA that no harmonised solvency rules should be introduced, as stated in EIOPA's opinion on a common framework for risk assessment and transparency for IORPs (April 2016) and in this Advice. The concept of holistic balance sheet has been debated for quite a long time also during the review of the IORP Directive in 2012 and 2013. Back then it was rejected because it was concluded that such an approach was impracticable, burdensome and counterproductive for most DB schemes. This approach is also copied and paste from Solvency II which is not relevant for retirement provisions.

We are happy that EIOPA does not reiterate its Advice as of April 2016 that a common framework for risk assessment and transparency should be introduced. Calculating the Common Balance Sheet (CBS) and reporting it to the NCAs and the participants on an annual basis as the standardised risk assessment would increase the tension on standards and required information between national supervisors and EIOPA. Furthermore, we are concerned that in the end this would result in an introduction of harmonised capital requirements for DB IORPs at the EU level through the back door.

AEIP believes that NCAs shall not use the common framework approach and in our view a cash flow analysis is a better tool to analyse the long-term risks of an IORP since it takes into consideration the time factor. We do not believe that the CBS can be implemented in an effective way, especially for small and medium sized IORPs, for a number of reasons linked to its complexity and interpretation difficulty. Market consistent valuations of liabilities are unreliable and too dependent on arbitrary assumptions, approximations and simplifications. 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. Thus, we question whether market consistency will provide for a realistic picture of the financial soundness of an IORP due to its long-term horizon. Finally, the application of the CBS would imply high costs for IORPs. Additionally, AEIP strongly believes that NCAs are best placed to judge the risks, vulnerabilities, threats and weaknesses of the system given the local labour market, the national social and labour legislation as well as the local social environment, and to take any action required.

Miscellaneous

We agree with the recommendation (on Advice 2.8.1)

Investment rules relating to markets

We agree with the recommendation (on Advice 2.8.2)

Own-Risk Assessment

Recommendation (on Advice 2.8.3)

The provision suggested is already in place in some Member States and we see no compelling reason to introduce further regulation on this subject. We do not support steps that have as major objective to shift the IORP framework into the direction of the Solvency II framework.

EIOPA recommends supplementing the ORA requirements with principles for an ORA policy and the consideration of the IORP's risk tolerance limits. According to the Feedback Statement of EIOPA (see p.18) 48%, including EIOPA's OPSG, disagreed with this suggestion. The benefits of implementing such a requirement seem uncertain as the ORA is already defined in the IORP II Directive. Additional policy document requirements will further increase the cost for IORPs and could also go beyond the minimum harmonisation. IORPs are subject to many regulations, which already requires a significant level of reporting. In some Member States such as Belgium, the Netherlands and Germany there is already a

provision in place that risk assessment should consider the risk tolerance limits approved by the IORP's management or supervisory body. We appreciate that EIOPA recommends a streamlined option containing the principle of an ORA policy – without a detailed listing of main elements, this shall not impact national measures and procedures. Still, we see no compelling reason to introduce further regulation on this subject. It will only lead to supplementary costs without introducing any additional benefits to the members and beneficiaries. Such measures should not lead to an erosion of ORA. We do not support steps that have as major objective to shift the IORP framework into the direction of the Solvency II framework.

2. Cross-border activities and transfers

Prudential assessment within process of registration or authorization

Recommendation (on Advice 3.6.3)

In principle, we support an approach to tackle the issue of regulatory arbitrage, but this shall be done in line with the minimum harmonisation principle and shall not lead to any mandatory changes for IORPs. The latter is especially relevant considering that EIOPA does not provide a suggestion regarding the wording of Art. 9 and its implications for the prudential assessment required for registration or authorization, which all IORPs will have to undergo.

As a suggestion to tackle regulatory arbitrage we suggest to consider providing for a host Member State the option to not allow the provision of pension schemes by IORPs operating in this very special mode.

Cross-border transfers

Recommendation (on Advice 3.7.3)

We agree that the next review should assess the need for improvements for cross-border transfers. We suggest that EIOPA takes a broad perspective that looks at the issues that cross-border activities are meant to solve and considers alternative approaches to tackle them. Any actions on the matter should never harm non-cross-border IORPs and their members' and beneficiaries' trust in their schemes and importantly not through interfering with national social labour law or tax law (social partners cannot operate cross-border due to national competencies; and the pension benefit of their IORPs cannot (or can hardly) be offered in a cross-border dimension).

Overall, there is support for change among our members, yet members have divergent views on how to achieve an improvement in cross-border transfers for IORPs. However, all our members emphasise that the review should not interfere with national social, labour law or tax law. Some of our members believe that calculating simple majority based on the received responses is a positive development since it might be easier requirement to meet than a majority of all members. Additionally, setting a minimum threshold of up to 25% of members and beneficiaries for participation in the approval of the transfers allows Member States to set the threshold at a higher level if needed to ensure that cross-border transfers are not directed to commercial parties as well as not bypass social partners in the approval.

Some other members are in favour of a non-discriminatory definition of majority, i.e. the same for domestic and cross-border transfers, as well as clarification that national law of the host Member State takes precedence to define the majority for transfers. They mention that although intended to facilitate cross-border activities and cross-border transfers since the introduction of the IORP II Directive cross-border transfers have stopped, even between countries where such transfers happened before. Further, they observe that some Member States have introduced additional hurdles to cross border transfers by introducing excessive majority requirements that only apply for cross-border transfers. They add that several sponsors that are active in different Member States want to consolidate their pension liabilities in a single IORP but had to pause these projects due to the hurdles put in place at national level.

It is clear for all that cross-border activities of IORPs have not taken off significantly since the introduction of IORP II. The main challenge lies in the fact that it is still necessary to follow the social, labour and tax law of the host countries. Therefore, the potential benefits of cross-border activity are moderate at best, as the single cross-border IORP needs to have sufficient knowledge and expertise in different national rules. Moreover, there are cross-references between tax, labour and prudential regulation which means that splitting these types of law between home and host countries can lead to unexpected consequences. We strongly believe that it is excessive to require the harmonization of social, labour or tax regulations to cater to the very small percentage of IORPs that cater on a cross-border basis. In addition, internal transfer rules should not be defined at EU level, i.e. there should be no impact on domestic rules.

Supervisory cooperation

We agree with the recommendation (on Advice 3.9.3)

Potential learning from other frameworks

Recommendation (on Advice 3.10.3)

We support practices that can enhance cross-border activities for IORPs, but not through national social, labour or tax laws. We support practices that promote pension dashboards and PTS.

3. Information to members and beneficiaries and other business conduct requirements

Pension Benefit Statement

Recommendation (on Advice 4.2.4)

We believe that there should be more freedom for pension funds to layer the information to target the information to their members and Member States and/or IORPs should be able to decide on their own how to share information as they best know what information needs to be shared and communicated to their members and beneficiaries.

EIOPA states in its Advice that NCAs have not provided a systematic evaluation of the PBS. In the Netherlands, the Ministry of Social Affairs has in fact conducted such a review² in collaboration with an independent research consortium. The evaluation concluded that the PTS is much more effective in meeting the objectives of pension communication. We do not understand why this relevant piece of research is not referenced by EIOPA. Overall, in the Advice EIOPA recommends amendments to Art. 38 and recommends that the PBS should be designed with a behavioural purpose. We welcome the fact that EIOPA suggests a principles-based requirement for the design of the PBS as we believe that there should be more freedom for pension funds to layer the information to target the information to their members and Member States and/or IORPs should be able to decide on their own how to share information as they best know what information needs to be shared and communicated to their members and beneficiaries. Nevertheless, unfortunately such a principles-based approach is not reflected in the amendments put forward in Art. 38, where more focus is placed on the characteristics of the pension schemes, and as such, on providing information on the level of risk borne by the member.

The Advice mentions in Art. 38(6) that Member States '*shall specify the format and structure of the pension benefit statement to ensure comparability across different IORPs*'. While we prefer that this is left at national level over creating EU level standardized formats, we emphasise that this should not lead to a situation where legislators prescribe a detailed format and a standard template for all IORPs. The creation of these documents is very complex and expensive. AEIP is critical of rigid prescription of a standard format, especially for pension schemes where members have no choice. Templates often require too many details (e.g. SFDR templates), making information hard to comprehend. Templates are not suited to provide all details in an understandable manner. It is important for clarity and comprehensibility of the PBS that the features of the scheme itself and the background of workers in the industry are considered.

One of the main objectives of the 2016 review was to improve the provision of information. The PBS was a best practice in pension communication when it was incorporated into EU legislation. Principle-based regulation for uniformity in data definitions and presentation have facilitated a degree of aggregation and comparability. In some Member States, the PBS has delivered on what it is supposed to and includes all relevant information. We welcome the fact that EIOPA mentions in Art. 38(3) that the PBS shall be layered

² Source: <https://www.rijksoverheid.nl/documenten/rapporten/2020/01/31/evaluatie-wet-pensioencommunicatie>

and follow principles of good design. Nevertheless, we are worried that in general the Advice on the area 'Information to members and beneficiaries' goes to the opposite direction of this principle.

We acknowledge that there is room for improvement in pension benefit communication, still improvements must respect 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 ultimately borne by members and beneficiaries. For instance, aggregation at the fund level does not give a complete multi-pillar personal pension overview. And comparability between pension funds and providers is as of yet suboptimal. Pension Tracking Services (PTS) have been developed in some Member States. They are designed to address PBS's shortcomings by providing a complete overview of retirement income in a Member State. According to our Members who prefer PTS over PBS, PTS have the potential to provide superior comprehensibility, aggregation and comparability to the PBS. Thus, the state of play with regards to the PBS is very different across Member States. For the way forward, we advocate for an approach that is future oriented, so Member States and IORPs are free to decide and innovate on pension communication to provide beneficiaries with cost-efficient pension benefit information and comprehensive view on their future retirement income.

Information in the PBS on sustainability factors

Recommendation (on Advice 4.2.5)

The PBS should include only relevant information on pension benefits at personal level. Adding a summary on sustainability issues could create lengthy, complex text, which could result in more uncertainties rather than providing clear information on pension benefits.

Even though we believe information on sustainability is important and should be made available, easy to find and easily accessible for pension fund members, this does not fall within the goal of the PBS. PBS needs to provide an overview of retirement income provided by IORPs to improve the adequacy of savings; other means of communication are more appropriate for that than the PBS to provide information on sustainability factors.

EIOPA identifies the goals of the PBS in the paragraph on the structure and format of the PBS. These considerations are however not applied to further paragraphs. We feel that, with EIOPA's proposals for additional information requirements to be added to the PBS, EIOPA foregoes the questions of why information should be included in the PBS and how the PBS can be the most effective instrument at reaching its goal. Adding more information seems to contradict the goal of the PBS. The current experience with SFDR disclosures is that they lead to an overload of 'push' information to the individual. Even though IORPs are communicating about a pension benefit and not an investment product, pension scheme information will be diluted due to the sustainability disclosures: long information on investments, apart from the necessary information regarding the scheme, will be overwhelming for the reader.

Additional information requirements on sustainability, investment returns and risks, costs and investment decisions often relate to the pension fund at an entity level and do not contribute to a personal overview of retirement income. Including these requirements makes the PBS longer and more complicated which could create more uncertainties than providing clear information. We support that PBS should include only relevant information on pension benefits at a personal level.

Other considerations regarding the contents of the PBS

Recommendation (on Advice 4.2.6)

EIOPA advises adding more information points in the PBS. Lengthening the PBS contradicts the design objectives outlined by EIOPA in the past, which aimed to make the PBS short and concise.

EIOPA recommends the inclusion of new points in Art. 39 along the lines of providing more information on the return on investments and where members bear investment risk and can select between investment options. In our view, the wording of EIOPA is very broad and leaves a lot of room for interpretation upon which IORPs should this requirement apply.

Information needs to be changing over time, it needs to be personal and actionable to be relevant in the context of the PBS. Communication to members and beneficiaries should be done in a simple and comprehensible manner. AEIP believes that the IORPs should be able to decide on their own how to share information as they best know what information needs to be shared and communicated to their members and beneficiaries. AEIP supports that there should be more freedom for pension funds to layer the information to target the information to their members. In our view, layering refers to linking to information in a separate document or webpage. Rather than presenting in-depth information in the PBS, pension fund members should be able to find the suitable links and sources in the PBS. There is the need to improve the use of digital tools to support pension communication. We suggest leaving room to Member States and/or IORPs to voluntarily add tailored information to their members.

EIOPA advises adding more information points in the PBS. In general, we believe that approach exacerbates the existing issues with the PBS, rather than improving it. Lengthening the PBS contradicts the design objectives outlined by EIOPA in the past, which aimed to make the PBS short and concise. Therefore, we believe the information on the different investment options should not be mentioned on the PBS, but in other more appropriate documents. We would propose to add any possible additional information items to Art. 40 as Supplementary Information, rather than Art. 39 on the PBS. We would also propose transferring paragraphs 1f, 1g and 1h of Art. 39 to Art. 40. Please note that in some cases the investment options are rather extensive. The PBS can refer to the place where this information can be found.

We think information requirements should predominantly consider options and choices to be made by members. We could see the relevance of providing mutations in pension entitlements, investment returns, premiums, and costs outside the PBS - if members' choices exist. By providing information about how investment returns affect personal pension benefits, it is more comprehensible, and members will be able to take clear action based on their personal situation.

Our members' views on the extent to which the current PBS has delivered on its objectives

In principle AEIP members believe that the PBS has been successful in delivering to some extent its objectives as for example it includes all relevant information and as such the details are sufficient to present the relevant oversight. AEIP would like to point at possible room for improvement. The information in the PBS can be hard to comprehend. The aggregation level at pension fund level is inadequate for giving a complete overview of all first and second pillar pensions. And the comparability of information between pension funds and other pension providers is sub-optimal. PTS have the potential to provide superior comprehensibility, aggregation and comparability to the PBS. Another point that we wish to raise is that additional information can hinder comprehensibility. The PBS design risks giving members and beneficiaries an information overload.

Principles for uniformity in data definitions and presentation in IORP II have facilitated a degree of aggregation and comparability. They have contributed and will contribute to the development of PTS. At the same time, prescriptions on the form, content and timing of communication can be seen as too rigid. Notably, the requirement of a durable medium is ill-suited to the use of behavioural purposes and new communication tools. It should be noted that in many Member States, the implementation of IORP II has been done recently. In some member states where PBS is part of social and labour law it requires changes to the PBS of service providers other than IORPs to maintain a level playing field. For many IORPs, there is still work in progress on concluding how to improve comprehensibility in wording and design. Such works is time-consuming as each change, especially projections, cause extensive efforts in programming and amendments of the software.

By replacing prescriptive regulation by principle-based regulation, Member States would be able to continue to use their current PBS format, while leaving the freedom for other Member States to adopt approaches that address the shortcomings of the PBS, including further development of PTS systems. Continuing with prescriptive PBS regulation will lock in this instrument for many years to come, by which it will prevent pension funds from applying innovations in (digital) communications, which could be cost saving and be used to provide better information to members and beneficiaries.

Digitalisation

Recommendation (on Advice 4.3.3)

The IORP must be allowed to define their own default format concerning the availability and medium of the PBS. The current approach for providing an appropriate channel or medium for communication is well balanced.

We believe that the suggested approach i.e. requesting the member's or beneficiary's preferred format, would lead to increased technical and costly efforts for IORPs, and we question whether the benefits for members justify these costs. We believe that the IORP must be allowed to define their own default format. The current approach to providing an appropriate channel or medium for communication is well balanced. IORPs decide how to deliver the PBS and other documentation. In the current situation, members' and

beneficiaries' interests to receive information in their preferred communication channel or medium are already safeguarded. They can choose not to leave their email address or request information on paper.

We welcome that EIOPA decided to remove the requirement for the PBS to be available on a quarterly or semi-annual basis; members and beneficiaries are used to annual information. Also, we appreciate that EIOPA has not moved forward with the requirements for IORPs to digitalise their PBS and/or other documentation; importantly for communication tools and channels, one size does not fit all.

Arts. 36&38 IORP II require IORPs to make information available in a 'durable medium'. Information should be gathered in one document (paper or .pdf format) or an unchangeable template in an online personal environment, i.e. a requirement to use a sustainable carrier of communication that is communicated through a single medium. This requirement impedes the provision of layered information and the application of new means of communication to make information available in an accessible way. We support more freedom for pension funds to layer information to target the information to their members while there is the need to improve the use of digital tools in a way to support pension communication. In our view, layering refers to linking to information provided in a separate document or webpage.

To foster digitalisation and make it feasible and cost efficient for smaller IORPs, it is important to recognise the role of PTS. Considering the principles of minimum harmonization and subsidiarity, Member States should have the freedom in choosing how to use synergies between the Pension Tracking Services and the PBS. AEIP thinks it should be allowed to provide benefit communication through the PTS and as such replace the PBS and other benefit communication requirements.

Due to diversity of IORPs and their schemes we see limited added value in the requirements for IORPs to put in place safeguards such as choice guidance to support member or beneficiary when making choices. Effectiveness of a choice architecture is highly dependent on the number of choices available to the member, the design of scheme and tools pension funds have to help members take decisions. Such requirements are rarely relevant as members and beneficiaries in most cases do not have any choices. Also, we believe that this approach goes beyond the scope of minimum harmonisation and touches on the design of pension scheme. From paritarian perspective, the design of choice architecture lies with the administrative centre, which often has been set up by social partners, and IORPs have no role. IORPs should get the opportunity to organise communication in the most cost-effective way.

Transparency on costs and charges

Recommendation (on Advice 4.4.5)

We agree with EIOPA that transparency of costs and charges is very important because of their potential effect on pension outcomes. However, where no choices for the members and beneficiaries are available and where membership is mandatory, cost transparency seems less relevant. We feel that in EIOPA's proposals for additional information requirements on costs to be added to the PBS, EIOPA neglects the goal and good design principles it has established itself.

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 must operate cost-effectively to ensure the best possible pensions. We feel that in EIOPA's proposals for additional information requirements on costs to be added to the PBS, foregoes on the questions of why information should be included in the PBS and how the PBS can be effective at reaching its goal. It thereby neglects the goal and design principles it has established itself. We do not think information on costs and charges fits within the goal of the PBS. Also, IORP II includes a provision on reporting costs and Member State have implemented this at national legislation. For instance, in Belgium this has been included in the social and labour law provisions and as such it also became applicable to supplementary pension providers other than IORPs. In other Member States or pension regimes, such information may be unnecessary or even confusing. However, these new changes and practices have been implemented very recently. As a result, some of our members prefer to assess the outcome of the current practices before proceeding with new developments. Considering this, we believe that Member States are better positioned to regulate cost reporting.

We believe that EIOPA's demands on pension funds entail significant complexities in breaking down and attributing costs, potentially resulting in considerable additional administrative expenses for pension funds. We question whether the benefits for members justify these costs. While EIOPA advocates for better comparability of cost information, we doubt whether their proposed amendments to IORP II will achieve this goal. Without clear definitions of terms such as 'costs of administration,' 'investment costs,' 'assets,' and 'portfolio transactions,' costs may be accounted for differently across pension funds. Establishing such definitions will be challenging given the heterogeneity of the pension sector.

EIOPA advises (Art. 39, first bullet) that administration costs should be broken down and reported to facilitate comparability. However, administration costs are inherently incomparable, because funds may choose to provide varying levels of service to their members, resulting in different cost levels. This variability can be justified by the diverse needs and preferences of members. Excessive emphasis on cost comparison may incentivise pension funds to reduce service levels, which is undesirable. EIOPA further advises (Art. 39, first bullet) that investment costs should be broken down to facilitate comparability. However, we believe that this approach would present an incomplete and potentially misleading view of costs. Different asset classes incur widely varying costs; for example, illiquid assets may have few transactions, resulting in high costs in acquisition years but zero costs in subsequent years. Additionally, certain asset classes may have higher costs that are justified by higher returns or risk diversification. Therefore, information on investment costs should be supplemented by details such as the risk-return profile of assets, the frequency of portfolio transactions, and investment returns.

Further challenges may arise in quantifying investment costs in monetary terms (Art. 39, first bullet), as investment returns and risks may be attributed differently among pension fund members. For instance, a pension fund may collectively invest funds for groups of members with varying investment options, such as defensive and offensive strategies. Alternatively, returns and risks may be redistributed within the fund based on lifecycles, or costs may not be directly borne by all members. Estimating how costs impact final

benefits (Art. 39, second bullet) can be difficult. Many IORPs have solidarity mechanisms, whereby costs, investment risks and benefits are not directly or entirely borne by members.

Information on potential retirement benefits (projections) and past performance

Recommendation (on Advice 4.5.5)

The IORP Directive should not prescribe indicators for the scenarios to be used in projections, and we advocate for scenarios to continue to be specified at the Member State level.

Projections heavily rely on the specific schemes in place, and in general, providing projections is a highly challenging task. The diversity among IORPs complicates the creation of default scenarios that are suitable for all schemes. The existing IORP Directive already includes a provision on reporting projections, and Member States have incorporated this provision into their national legislation. We believe that the IORP Directive should not prescribe indicators for the scenarios to be used in projections. For instance, inflation rates vary among Member States. Therefore, we advocate for scenarios to continue to be specified at the Member State level.

Regarding the recommendation in Art. 39 to add a short narrative explanation on the estimated future value of retirement benefits in the PBS, we emphasise again that this could lead to a lengthier and more complex document. Similarly, adding more information to Art. 40 will have the same negative impact as explained in the sentence before and in our input above. In terms of adding information on the risks and potential future benefits for each investment option under Art. 41 we echo again our concerns that this goes in the opposite direction on the principles of the good design of the PBS. In addition, under paritarian pension funds members' choices, where most of the times compulsory participation exists, information for each investment option is irrelevant. A point of attention relevant to Art. 42, is that in many cases, pension funds do not offer a product in the pay-out phase; or members have a choice between staying with the fund for pay-out or switching to another provider. In other words, in many cases pension funds do not offer pay-out products themselves. They cannot and should not be responsible for projections of products they do not offer themselves.

Other business conduct requirements

Recommendation (on Advice 4.6.1)

The concept of business conduct requirements does not align with the vast majority of IORPs, as it fails to recognize the role of social partners in the structuring and implementation of IORPs. The introduction of business conduct requirements will likely necessitate extensive reporting from IORPs to supervisors, consequently increasing costs for members.

EIOPA recommends adding requirement regarding appropriate structuring and implementation of schemes. We underline that EIOPA moved on with this advice even though most of the stakeholders were in favour of no change (EIOPA's Feedback Statement, p. 29). In their response, stakeholders – AEIP included - pointed out that aspects such as appropriate structuring and implementation of the schemes

are already addressed via social partnerships or national social or labour law or that requirements relating to product governance are not appropriate to IORPs.

While we appreciate that EIOPA explicitly mentions in its Advice (p. 154) that *'new provisions in the IORP II Directive, should take into account the scope of the IORP's responsibilities and acknowledging in particular the primary responsibilities of social partners'*, it remains unclear from the advice how this consideration will be implemented in view of the revised IORP Directive. Specifically, this element is not reflected in the points made by EIOPA on this matter, nor is it evident in its overall approach in the Advice. For example, in the previous chapter addressing conflicts of interest, EIOPA adopts the same approach for all IORPs, including paritarian and MIPs. Consequently, it is crucial to reiterate the following points regarding paritarian IORPs and their distinction from other IORPs, as well as from pure financial institutions.

Paritarian IORPs should meet certain minimum prudential standards with respect to their activities and conditions of operation, taking into account national rules and traditions. Their social function and the triangular relationship between the employee, the employer and the IORP should be adequately acknowledged. The social partners supervise the IORPs' activities, so there is a control mechanism in place to ensure members' interests and needs. To our knowledge, paritarian IORPs are generally functioning well and effectively. Many of them have existed for quite a long time (usually several decades), with lean administration and asset management structures. We suggest continuing this success story; introducing additional requirements on structuring and implementation would not increase their efficiency.

The inclusion of social partners leads to better pension adequacy and long-term commitment to capital-funded pensions. Moreover, where benefits are not guaranteed, social partners often play a role in defining a pension benefit ambition and annually calibrate pension contributions against this ambition. Undermining the role of social partners would lead to an individualization of pensions, which – due to well-documented behavioural biases such as short-termism – would erode pension adequacy. Introducing requirements to ensure the appropriate structuring and implementation of the pension scheme by the IORP will hurt the social partner governance model. IORPs are very diverse across Europe. A one-size-fits-all approach is therefore not appropriate. The market is not only heterogeneous in terms of the size of the IORPs (both in number of participants and assets under management) but also their scale and nature differ a lot. This diversity inevitably has an impact on their conduct and the associated risks. Introducing additional requirements would increase the costs, reducing the pension benefits for the members and beneficiaries without adding any benefits to them.

In as far as these IORPs operate within one Member State we feel that national legislators and NCA's are better positioned to ensure that the interests of members and beneficiaries are taken duly into account. In the proper design of a pension scheme, it is very important to take account of national pension, labour and tax law in the country of provision of a pension scheme. We feel that national legal requirements in these areas, often will already protect against the risks described.

Duty of care

Recommendation (on Advice 4.6.2)

If the suggestion to introduce the duty of care principle is considered, we emphasize the necessity for it to be principles-based, and its phrasing to ensure that not all IORPs (due to the diverse nature of pension schemes and the involvement of social partners) are subjected to new obligations.

We welcome that EIOPA recommends that if a duty of care is introduced this should be principle-based to offer appropriate flexibility for the implementation of different types of schemes. We are pleased that EIOPA did not move forward with its option to introduce European legislation of choice architecture. Nevertheless, we think EIOPA's formulation of the duty of care to act '*fairly and in accordance with the best interests of members and beneficiaries, and supports prospective members*' is too broad. It creates a general duty of care towards members, which is unnecessary, considering the protection of members' interest within pension fund's governance structures. It is also undesirable, as pension fund boards should balance the interests of all stakeholders involved, not only those of (prospective) members and beneficiaries. Most of our members are cautious against the introduction of any fixed costs due to a possible introduction of a duty of care requirement.

We appreciate that EIOPA notes that the application of the principle of duty of care shall acknowledge the primary responsibilities of social partners. In our perspective, the mention of the nature of the pension scheme and the role of social partners, entails that the duty of care, if introduced, should only apply to those IORPs that are responsible for plan design, offer complex choices, and social partners/employers' and employees' representatives play no role in the governance of the scheme. If the suggestion to introduce the duty of care principle is considered, we emphasize the necessity for it to be principles-based and its phrasing to ensure that not all IORPs are subjected to new obligations since unnecessary additional costs should be avoided.

Paritarian governance structures already protect the interests of all stakeholders involved

Paritarian pension funds are set up by collective agreements so by construction they do not present any conflicts of interest and they represent members and beneficiaries. Overall, we believe that the IORP Directive should better recognize the triangular relationship between the IORP, employer and employee. Paritarian governance structures already protect the interests of all stakeholders involved, including – but not exclusively – those of (prospective) members and beneficiaries. In most countries, a duty of care is also in place in civil law. Governance structures in place recognize a specific role for social partners, often driven by social and labour regulation. In such cases, the IORP's role is limited to a manager, facilitator and executor of a pension scheme without bearing any responsibility whatsoever on the design of the pension scheme. Therefore, IORPs often do not have a responsibility over the structuring and implementation of the pension scheme or choice framework. Proposed measures therefore seem inappropriate, as they touch on the workings of the paritarian model. Some of our members are concerned that the costs of introducing a duty of care requirement for many IORPs will not outweigh the benefits created for members and beneficiaries and such cost increase is especially burdensome for small and mid-sized IORPs.

Members could benefit from principles-based communication rules

Pension fund members would benefit from principles-based communication rules. Open norms should provide uniformity of goals, intended results and principles, rather than communication content, presentation, tools or channels, unless those are proven to be functional or effective. In applying open norms, pension providers should explain how chosen communication approaches are effective rather than execute a compulsory communication approach. We believe Member States and IORPs are best able to determine how to provide the most effective and cost-effective communication, which is in line with the principles of subsidiarity and minimum harmonization.

4. Shift from DB to DC

General comments on the shift from DB to DC

In our knowledge the shift from DB to DC has already been taking place for more than 30 years in a number of countries as a result of different factors i.e. changes in the labour market, demographic challenges, financing and sustainability of pension schemes etc. Also, the current Dutch system could already be categorized as having DC elements and falls within EIOPA's broad definition of 'DC', thus we are cautious on the proposals put forward by EIOPA in this chapter and we do not agree with the introduction of a new definition of DC schemes as this could lead to more confusion. First, considering the minimum harmonization of the Directive and second the complexity and differences in pension systems at national level we are questioning whether it is consistent and beneficial for all Member States a situation where proposals are triggered at a minimum harmonization Directive due to pension reforms at national level. This can lead to a dangerous situation where reforms and reviews follow the national developments and avoid the big picture at European level. Additionally, we believe that it could create a complex situation due to different understanding of notions at national and European level considering the specificities of social and labour law as well as the role of social partners in a paritarian model.

We do not agree that the change from DB to DC as proposed in the Netherlands really does increase risks for members and subsidiaries. However, taking account of members and beneficiaries risk tolerance in the scheme's (investment) policy and providing them with insight based on projections are part of the Dutch legislative proposal. The new law will oblige IORPs to find out about risk attitude of members and beneficiaries and the (investment) policy should consider these findings. It is, however, crucial to understand that under the new solidarity contract, the risk attitude in the end will have to be a collective risk tolerance, and not one which will be different for different individual members and beneficiaries, because also in the new system, Dutch IORPs will operate one single, age-dependent investment policy. Finally, it is obvious that members and beneficiaries have a need to be well informed about how 'pension pots may translate into pensions under a few different realistic scenarios.

Long-term risk assessment

Recommendation (on Advice 5.5.1)

Although EIOPA's suggestion may address theoretical risks for pure DC plans, it may not necessarily account for the specificities of different schemes at the national level. If new rules on long-term risk assessments from the perspective of members and beneficiaries are introduced, they should duly consider the prudent person rule. However, the introduction of new rules should not lead to the introduction of a common framework for risk assessment.

The advice of EIOPA may address theoretical risks for pure DC plans, but do not necessarily address the specificities of different schemes at national level. The same risk management should not be applied to all type of plans as the distribution of the risk between sponsor, IORP and members and beneficiaries is totally different. IORPs must be in a position to reflect the heterogeneity of pension plans in their long-term risk assessment. In the context of their ORA IORPs already assess the risks of members and beneficiaries in relation to their retirement benefits.

Several of our members welcome the advice of EIOPA. Nevertheless, they underlined that if new rules are adopted, they should have due consideration for the prudent person rule. For instance, when determining risk tolerance of members and beneficiaries bearing risks according to the prudent person rule, factors like member characteristics, future contributions and statutory pensions should also be factored in. It is positive to see that EIOPA makes a distinction between IORPs that offer multiple investment options and those that do not offer multiple investment options. Nevertheless, this distinction does not fully capture the heterogeneity of pension plans offered. We believe that if this part of the Advice is adopted the rules should only apply to pure DC plans. Additionally, regardless of the IORPs, there is a requirement to review the investment strategy 'periodically', this is vague and unclear. We believe that it would be good to further specify the review period of the investment strategy; we would suggest setting it at five years.

Pension projections seem to be an adequate tool to assess long-term risk from the perspective of members, but at the same time it would be a complex and burdensome task especially for small and medium-sized IORPs. It would be even more burdensome if every contractual feature had to be reflected in the projections, therefore significant simplifications especially for smaller IORPs should be allowed. As for the risk tolerance of the members and beneficiaries, it can be difficult to get a clear picture as the results might be very heterogenic and, dependent on the financial education, might not be reliable. In the case of paritarian IORPs members' investment preferences are encompassed by social partners too, because social partners are democratically elected by their constituencies. Therefore, in these cases IORPs organised in this way do not need additional surveys or samples. It should be noted that risk tolerance should not be directly translated into investment strategy. Whereas several of our members are in favour of the advice, some of our members do not see any benefits. They point out that additional requirements might be appropriate for some pension plans/IORPs but are not appropriate for others, adding that cost increase related to the advice will reduce the pension benefit.

For the way forward any amendments should be drafted in a way that national legislators and NCAs can adapt to approaches that provide relevant extra protection to members and beneficiaries, but do not result in disproportionate administrative burdens. We believe that the NCAs are best placed to assess the appropriateness of the long-term risk assessment and the ORA applied by the IORPs considering the size, nature, scale and complexity of the pension plan as well as IORPs' size and internal structure. The introduction of new rules should not lead to the introduction of a common framework for risk assessment.

Supervisory reporting on costs and charges

Recommendation (on Advice 5.5.2)

In principle, information on all costs and charges is available in a condensed manner in the annual report, and thus annually updated. In some countries, any additional reporting would lead to additional costs whereas the benefit would be unclear.

EIOPA makes a theoretical distinction by suggesting introducing reporting for schemes where members and beneficiaries 'bear risks'. In practice, this is very hard to tell and distinguish, considering the various and mix nature of DC and DB pension plans. This aside, we agree with cost transparency and comprehensive cost reporting as an objective of the management board of the IORP and/or the negotiating social partners in the setup of a pension scheme as well as its importance for members and beneficiaries as part of their pension benefit communication. Nevertheless, extensive cost communication to the NCAs would not add any value.

A point of attention is that the supply of information/data to the national competent authority and EIOPA should match as closely as possible, to avoid an increase in supervisory costs resulting from double reporting. EIOPA should further consider the results of publishing an overview of IORPs' costs and charges. In principle, information on all costs and charges is available in a condensed manner in the annual report, and thus annually updated. Any interested member and beneficiary can inform itself if desired. With respect to certain sectors, beneficiaries' interest in this information is rather limited. In some countries, any additional reporting would lead to additional costs whereas the benefit would be unclear.

Some members feel that the need for more detailed cost reporting and related supervision is highly depending on the structure of the market and who bears the cost. A DC market where investment portfolios are set collectively highly differs from a pure DC market based on an individual's free choice of the investment fund/provider. Taking a one size fits all approach generates unnecessary costs for many small and medium sized IORPs which is detrimental for the members' benefit, and which diminishes the affordability of many sponsors to organize an adequate pension scheme. Detailed reporting in a pure DC environment on cost and charges can also be misleading to members and beneficiaries. What should matter most is the net investment return and the associated risk. However, other members feel that - also in a DC context - cost transparency could be useful for social partners to assess whether the scheme provides value for money and to consider options for improving cost efficiency. We invite the European Commission to carry out a more detailed assessment to assess the advantages and disadvantages of this option, also in view of its aim to rationalise and decrease reporting requirements.

Complaints procedure and alternative dispute resolution

Recommendation (on Advice 5.5.3)

Any specific text should be carefully studied in as far as it may extend the scope of issues that may be submitted in the complaints' procedure and for ADR. It would not be acceptable for the Directive to extend entry to judicial procedures beyond national law; we welcome a principles-based approach.

Increased transparency of NCAs – Risk assessment framework

We have no recommendation (on Advice 5.5.4)

Member and/or beneficiary involvement in IORPs governance

Recommendation (on Advice 5.5.6)

The formulation of contributing in a '*meaningful way*' is unclear and should be further developed. From our perspective, it should not mean that accountability bodies get competences to decide on policy. It is important for representatives of members and beneficiaries to be consulted for them to be able to advise on issues that have an impact on them. Considering balanced decision-making based on all stakeholders' interests, the board should have the final say.

Fit and proper requirements

Recommendation (on Advice 5.5.7)

In our perspective, it seems obvious that members of the board of an IORP have sufficient understanding of the type of pension scheme offered. Also, this advice seems to imply an EIOPA view that DC schemes are inherently riskier for members and beneficiaries than DB schemes, with which we would not agree.

5. Sustainability

The integration of sustainability in investment decisions

Recommendation (on Advice 6.4.3)

We advocate for a principle-based consideration of double materiality under the prudent person rule; this aligns with existing practices of numerous pension funds. Pension funds ensure that investment decisions adhere to the prudent person rule, providing a robust framework for responsible investing.

Occupational pension funds, as long-term investors, can play a pivotal role in financing our society's transition towards a net-zero economy, but at the same time we should not forget that their main purpose is to provide good pensions to their members. We fully understand that sustainability is a crucial topic in the context of pension fund investments, and it is of course of paramount importance integrating sustainability factors into investment decisions. Many paritarian IORPs already do so, and have ambitious

responsible investment policies in place, which demonstrate a proactive approach towards sustainability. For instance, more and more social protection funds consider the negative impact of investments on the environment and societies (inside-out perspective); voluntarily in line with the OECD Guideline and UN Guiding Principles on Business and Human Rights, and compliance under the recent SFDR and the (CSRD). The current Directive already requires IORPs to explicitly disclose where ESG factors are considered in investment decisions and how they form part of their risk management system. There are however some new elements in EIOPA's advice, such as the inclusion of the double materiality principle, and the requirement of reflecting the sustainability preferences of members and beneficiaries in investment decisions (addressed in the next section). We advocate for a principle-based consideration of double materiality under the prudent person rule. This approach aligns with the existing practices of numerous pension funds. We believe it is key to allow fund boards the necessary flexibility to accommodate various viewpoints, especially in paritarian pension funds established through collective agreements. These funds ensure that investment decisions adhere to the prudent person rule, providing a robust framework for responsible investing. We welcome the idea that EIOPA suggests amending Art. 19 as follows '*within the prudent person rule, IORPs shall take into account sustainability risks in their investment decisions*'.

Nevertheless, EIOPA advises revising Art. 28(2)(h) (refers to the use of scenario analysis '*where sustainability risks are considered*') of the IORP II to include in ORA the application of scenario analysis to quantify the risk exposures to climate change. This is a bit contradictory with the proposed amendment of Art. 19(1)b which would require the consideration of sustainability risks. Thus, scenario analysis would become mandatory for all IORPs. Scenario analysis requires significant resources such as data and modelling which need to be sourced from external providers. This does not seem a proportional approach.

EIOPA believes that the consideration of long-term sustainability factors under the prudent person rule should not automatically trigger the application of Art. 8 SFDR for a pension scheme. We understand that as long as IORPs do not disclose the potential long-term impact on sustainability factors in a manner that could be interpreted as the promotion of environmental and social characteristics, they are not obligated to adhere to Art. 8 SFDR. Also, we read that IORPs must still consider the potential long-term impact of their investment strategy and decisions on sustainability for the purpose of managing sustainability risks. This consideration should be solely for sustainability risk management purposes and should not be intended as the promotion of environmental or social characteristics to members of the pension scheme. In principle we are aligned with the advice of EIOPA, still we strongly believe that a good legal analysis must take place before proceeding with amending the text of the Directive.

Definitions

AEIP disagrees with the proposal to lay down a definition of "sustainability preference" in line with Art. 1(55e) of Commission Delegated Regulation (EU) 2015/35³. The definition is based on three sustainability

³ The definition reads: "sustainability preferences' means a customer's or potential customer's choice as to whether and, if so, to what extent, one or more of the following financial instruments should be integrated into his or her investment:

(a) a financial instrument for which the customer or potential customer determines that a minimum proportion shall be invested in environmentally sustainable investments as defined in Article 2, point (1), of Regulation (EU) 2020/852 of the European Parliament and of the Council (2);

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 participants are not aware of or understand. Participants often think in themes (like climate, tobacco, social housing, animal welfare) and pension funds want to engage – e.g. on a voluntary basis with a survey (see next section) – on sustainability in a manner that leads to a decent response rate. If a pension fund would be required to explain a concept like the EU Taxonomy before gauging sustainability preferences, many participants would likely not complete the survey. 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. About including in Art. 6 the definitions of 'sustainability risk' and 'sustainability factors' set out in the SFDR or Solvency II Delegated Regulation we are concerned as this approach will not take into consideration the unique characteristics of pension funds.

Fiduciary Duties

Recommendation (on Advice 6.5.3)

On sustainability preferences we believe that pension funds should also be allowed to make use of their governance structures. Paritarian pension funds set up by collective agreements do not present any conflicts of interest and comply with the prudent person rule regarding investment policies.

We agree that as a principle, it is right to consider the preferences of the people on whose behalf the contributions are invested. However, the IORP Directive should not prescribe through which method these preferences are ascertained and taken on board. While there are an increasing number of – particularly larger – IORPs that survey members, it remains challenging to translate these preferences to a single investment policy. The board will need to have sufficient flexibility to accommodate all views. Moreover, surveying is cost intensive and the governance structures of paritarian IORPs include representatives of members and beneficiaries in the Board and sometimes additional representative bodies. Thus, we believe that pension funds should also be allowed to make use of their governance structures. Consequently, we understand that under the term 'gauge' (Art. 19) paritarian IORPs can rely on their governance structures to reflect the sustainability preferences of their members. Such a principle-based approach would not limit pension funds who want to use surveys on a voluntary basis.

Paritarian pension funds set up by collective agreements do not present any conflicts of interest and comply with the prudent person rule regarding investment policies. Their affiliated beneficiaries are not customers in this relationship, but they are affiliated automatically when concluding their employment contracts. Therefore, often they do not – and cannot – intervene in any investment decision, so there are no options for direct investment choice. The investment decisions are taken by the board of the pension scheme or by the asset management department, always in accordance with the prudent person rule which incorporates ESG aspects. Bearing in mind the particularities of occupational pension funds, we

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- (b) a financial instrument for which the customer or potential customer determines that a minimum proportion shall be invested in sustainable investments as defined in Article 2, point (17), of Regulation (EU) 2019/2088;
 - (c) a financial instrument that considers principal adverse impacts on sustainability factors where qualitative or quantitative elements demonstrating that consideration are determined by the customer or potential customer.

stress once again that the principle of proportionality must be ensured in practice for IORPs. In a paritarian institution, it would also be questionable whether the balance between the employer and employee sides could be affected by additional consideration of the interests of members and pensioners. We support EIOPA's proposal that board members should maintain the final say.

Stewardship

Recommendation (on Advice 6.6.3)

Disclosure on stewardship is envisaged under the SFDR framework and in certain cases additional further disclosure requirements on engagement are envisaged at national level. We deem it important to avoid any possible overlap between these frameworks.

Many IORPs have policies on voting and engagement. IORPs are subject to the Shareholders Rights Directive (SRD) and stewardship is regulated by SRD 2, which provides institutions with the right level of proportionality. Disclosure on stewardship is envisaged under the SFDR framework and in certain cases additional further disclosure requirements on engagement are envisaged at national level. It is important to avoid any possible overlap between these frameworks. EIOPA advice to amend Art. 30. The added value compared to the current practices is unclear to us. We believe it will generate an additional administrative burden, as it does not change the 'comply-or-explain' nature of the SRD. As a guiding principle changes to the IORP II Directive should primarily aim to reduce costs and reduce reporting requirements.

Broader societal goals

Recommendation (on Advice 6.7.3)

We strongly believe that (gender) pension gap is a problem for society which needs more attention and must be solved. The IORP has no impact on the labour market, the continuation of the employment relationship or on the salary on which the contributions and the pension regularly depend on.

We support the view that pension dashboard and pension tracking systems are fundamental to tackle gender pension gap by identifying emerging gaps through better and more comprehensive information. Also, we agree that another step is for governments to implement appropriate reforms to supplement the public pay-as-you-go schemes. We call on the European Commission to create and better establish a policy environment in view of the horizontal regulation that promote such initiatives which can lead to better pension outcomes and help tackle pension gender gaps.

6. Diversity and inclusion

General comments on Diversity and inclusion

The topic of diversity and inclusion (D&I) and promoting D&I initiatives should be fully embraced. We agree with EIOPA's that D&I extends beyond gender balance, encompassing various multidimensional aspects. It is important to note that diversity alone is not sufficient; an inclusive approach is crucial. D&I represent aims of societal importance, extending beyond the realm of IORPs and the IORP Directive. From our

perspective, the initial focus should be on ensuring good governance. It is widely acknowledged that diverse governing bodies, provided all members meet fit and proper criteria, are better equipped to make decisions. Governing bodies of IORPs make decisions on behalf of members and beneficiaries, inherently representing the diversity within these groups, without compromising on fit and proper considerations.

IORPs are committed and are working to further improve D&I in different areas and levels both voluntarily and through national requirements. Many countries have implemented policies that enhance D&I in IORPs through self-regulation. 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; this condition is subject to a comply or explain approach. In Italy and Sweden guidelines suggest that IORPs need to consider D&I policies, in Germany company law requires undertakings (IORPs included) to meet certain criteria to fulfil specific D&I obligations. Introducing D&I in the context of the IORP Directive should start with a clear recognition of the purpose for doing so, which could be reflected in the recitals of the Directive, from which specific articles with obligations could be derived.

Diversity & Inclusion in management bodies

Recommendation (on Advice 7.5.3)

We fully support D&I in the management boards, and we are committed to creating diverse workplaces and inclusive societies. Any new rules should not compromise on fit and proper considerations, need to respect national social and labour laws and acknowledge that paritarian boards already represent diverse perspectives.

In paritarian IORPs' Boards are appointed by different social partners and not by the IORP itself. Therefore, the paritarian composition of management boards reflects different perspectives and ensures that diverse interests are represented. This represents an important diversity that is unknown in other financial institutions. This diversity leads to better governance and better protection for members and beneficiaries and is based on the applicable social and labour law. Given the current extent of the fit and proper requirements, small and mid-size IORPs sometimes face challenges in attracting suitable board members. Size should be considered as a factor in this context, and proportionality should be applied to the principles of diversity and inclusion. It should also be noted that introducing diversity and inclusion rules for IORPs in the prudential regulation should also respect the social legislation in member states, i.e. including the results of social elections. An exemption for IORPs with three or less sponsor representatives is feasible.

Reporting on Diversity & Inclusion

Recommendation (on Advice 7.6.3)

Reporting policy information on the representation of genders with targets and a policy on how to increase the number of the underrepresented gender to the NCA and in the annual report is acceptable.

Annex 1: AEIP's recommendations: Governance and prudential standards

EIOPA's Advice	AEIP's recommendation: Governance and prudential standards
Proportionality: Small IORP exemption (2.3.6)	Increasing thresholds for exemptions can benefit small IORPs, but we are cautioned against a situation where the Directive will become applicable only to larger IORPs, as it would quickly lose its legitimacy.
Proportionality: Risk based proportionality formulations (2.3.6)	We urge not to restrict NCAs from using size and internal organisation criteria when applying proportionality. Such criteria can provide legal certainty and predictability for IORPs and encourage a consistent approach, for instance 'size' can be easily assessed and quantified.
Proportionality: Low-risk profile IORPs (2.3.6)	We welcome that EIOPA advises not to introduce the concept of low-risk profile IORPs into the IORP II Directive; a definition of 'low risk' is quite subjective and the criteria questionable.
Liquidity Risk Management (2.4.5)	We agree that NCAs should oversee whether EU IORPs with significant derivative portfolios can meet margin requirements. Still, we point out that a one-size fits all approach will not suffice for the heterogeneous nature of pension funds and a principle-based regulation approach is preferred. To best achieve this, we suggest that EIOPA drafts an opinion over guidelines.
Conditions of operations and management of conflict of interest (2.5.5)	We see no need to strengthen the conditions of operations for all IORPs as this will result in cost increases for reporting and supervision for all IORPs. We do not support the advice of EIOPA that requires all IORPs to submit a business plan. Also, we believe that if EIOPA wishes to address MIPs it should exclude sponsors from the definition of service providers.
Effective use of data (2.6.5)	Supervisors should have a clearly defined use for collecting data, to justify the reporting costs. EIOPA should further delineate the goals for collecting data, which should be generally within the role of prudential and behavioural supervision.
Standardised Risk Assessment (2.7.5)	We agree with EIOPA that no harmonised solvency rules should be introduced. We believe that NCAs shall not use the common framework approach and in our view a cash flow analysis is a better tool to analyse the long-term risks of an IORP since it takes into consideration the time factor.
Miscellaneous (2.8.1)	We agree with the recommendation.
Investment rules relating to markets (2.8.2)	We agree with the recommendation.
Own-Risk Assessment (2.8.3)	The provision suggested is already in place in some Member States and we see no compelling reason to introduce further regulation on this subject. We do not support steps that have as major objective to shift the IORP framework into the direction of the Solvency II framework.

Annex 2: AEIP’s recommendations: Cross-border activities and transfers

EIOPA’s Advice	AEIP’s recommendation: Cross-border activities and transfers
Prudential assessment within process of registration or authorisation (3.6.3)	In principle, we support an approach to tackle the issue of regulatory arbitrage, but this shall be done in line with the minimum harmonisation principle and shall not lead to any mandatory changes for IORPs. The latter is especially relevant considering that EIOPA does not provide a suggestion regarding the wording of Art. 9 and its implications for the prudential assessment required for registration or authorization, which all IORPs will have to undergo.
Cross-border transfers (3.7.3)	We agree that the next review should assess the need for improvements for cross-border transfers. We suggest that EIOPA takes a broad perspective that looks at the issues that cross-border activities are meant to solve and considers alternative approaches to tackle them. Any actions on the matter should never harm non-cross-border IORPs and their members’ and beneficiaries’ trust in their schemes and importantly not through interfering with national social labour law or tax law (social partners cannot operate cross-border due to national competencies; and the pension benefit of their IORPs cannot (or can hardly) be offered in a cross-border dimension).
Supervisory cooperation (3.9.3)	We agree with the recommendation.
Potential learning from other frameworks (3.10.3)	We support practices that can enhance cross-border activities for IORPs, but not through national social, labour or tax laws. We support practices that promote pension dashboards and PTS.

Annex 3: AEIP's recommendations: Information to members and beneficiaries and other business conduct requirements

EIOPA's Advice	AEIP's recommendation: Information to members and beneficiaries and other business conduct requirements
Pension Benefit Statement (4.2.4)	We believe that there should be more freedom for pension funds to layer the information to target the information to their members and Member States and/or IORPs should be able to decide on their own how to share information as they best know what information needs to be shared and communicated to their members and beneficiaries.
Information in the PBS on sustainability factors (4.2.5)	The PBS should include only relevant information on pension benefits at personal level. Adding a summary on sustainability issues could create lengthy, complex text, which could result in more uncertainties rather than providing clear information on pension benefits.
Other considerations regarding the contents of the PBS (4.2.6)	EIOPA advises adding more information points in the PBS. Lengthening the PBS contradicts the design objectives outlined by EIOPA in the past, which aimed to make the PBS short and concise.
Digitalisation (4.3.3)	The IORP must be allowed to define their own default format concerning the availability and medium of the PBS. The current approach for providing an appropriate channel or medium for communication is well balanced.
Transparency on costs and charges (4.4.5)	We agree with EIOPA that transparency of costs and charges is very important because of their potential effect on pension outcomes. However, where no choices for the members and beneficiaries are available and where membership is mandatory, cost transparency seems less relevant. We feel that in EIOPA's proposals for additional information requirements on costs to be added to the PBS, EIOPA neglects the goal and good design principles it has established itself.
Information on potential retirement benefits and past performance (4.5.5)	The IORP Directive should not prescribe indicators for the scenarios to be used in projections, and we advocate for scenarios to continue to be specified at the Member State level.
Other business conduct requirements (4.6.1)	The concept of business conduct requirements does not align with the vast majority of IORPs, as it fails to recognize the role of social partners in the structuring and implementation of IORPs. The introduction of business conduct requirements will likely necessitate extensive reporting from IORPs to supervisors, consequently increasing costs for members.
Duty of care (4.6.2)	If the suggestion to introduce the duty of care principle is considered, we emphasize the necessity for it to be principles-based, and its phrasing to ensure that not all IORPs (due to the diverse nature of pension schemes and the involvement of social partners) are subjected to new obligations.

Annex 4: AEIP’s recommendations: Shift from Defined Benefit (DB) to Defined Contributions (DC)

EIOPA’s Advice	AEIP’s recommendation: Shift from DB to DC
Long-term risk assessment (5.5.1)	Although EIOPA’s suggestion may address theoretical risks for pure DC plans, it may not necessarily account for the specificities of different schemes at the national level. If new rules on long-term risk assessments from the perspective of members and beneficiaries are introduced, they should duly consider the prudent person rule. However, the introduction of new rules should not lead to the introduction of a common framework for risk assessment.
Supervisory on costs and charges (5.5.2)	In principle, information on all costs and charges is available in a condensed manner in the annual report, and thus annually updated. In some countries, any additional reporting would lead to additional costs whereas the benefit would be unclear.
Complaints procedure and alternative dispute resolution (5.5.3)	Any specific text should be carefully studied in as far as it may extend the scope of issues that may be submitted in the complaints’ procedure and for ADR. It would not be acceptable for the Directive to extend entry to judicial procedures beyond national law; we welcome a principles-based approach.
Increased transparency of NCAs – Risk assessment framework (5.5.4)	We have no recommendation.
Member and/or beneficiary involvement in IORPs governance (5.5.6)	The formulation of contributing in a ‘ <i>meaningful way</i> ’ is unclear and should be further developed. From our perspective, it should not mean that accountability bodies get competences to decide on policy. It is important for representatives of members and beneficiaries to be consulted for them to be able to advise on issues that have an impact on them. Considering balanced decision-making based on all stakeholders’ interests, the board should have the final say.
Fit and proper requirements (5.5.7)	In our perspective, it seems obvious that members of the board of an IORP have sufficient understanding of the type of pension scheme offered. Also, this advice seems to imply an EIOPA view that DC schemes are inherently riskier for members and beneficiaries than DB schemes, with which we would not agree.

Annex 5: AEIP's recommendations: Sustainability

EIOPA's Advice	AEIP's recommendation: Sustainability
The integration of sustainability in investment decisions (6.4.3)	We advocate for a principle-based consideration of double materiality under the prudent person rule; this aligns with existing practices of numerous pension funds. Pension funds ensure that investment decisions adhere to the prudent person rule, providing a robust framework for responsible investing.
Fiduciary duties (6.5.3)	On sustainability preferences we believe that pension funds should also be allowed to make use of their governance structures. Paritarian pension funds set up by collective agreements do not present any conflicts of interest and comply with the prudent person rule regarding investment policies.
Stewardship (6.6.3)	Disclosure on stewardship is envisaged under the SFDR framework and in certain cases additional further disclosure requirements on engagement are envisaged at national level. We deem it important to avoid any possible overlap between these frameworks.
Broader Societal goals (6.7.3)	We strongly believe that (gender) pension gap is a problem for society which needs more attention and must be solved. The IORP has no impact on the labour market, the continuation of the employment relationship or on the salary on which the contributions and the pension regularly depend on.

Annex 6: AEIP's recommendations: Diversity and inclusion (D&I)

EIOPA's Advice	AEIP's recommendation: Diversity and inclusion
D&I in management bodies (7.5.3)	We fully support D&I in the management boards, and we are committed to creating diverse workplaces and inclusive societies. Any new rules should not compromise on fit and proper considerations, need to respect national social and labour laws and acknowledge that paritarian boards already represent diverse perspectives.
Reporting on D&I (7.6.3)	Reporting policy information on the representation of genders with targets and a policy on how to increase the number of the underrepresented gender to the NCA and in the annual report is acceptable.

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AEIP Disclaimer

AEIP represents the European Paritarian Institutions of Social Protection in Brussels since 1997. The association gathers 27 leading large and medium-sized social protection providers, which are managed on the basis of joint governance and equal representation by both employees and employers' organizations (the social partners) in 13 EU Member States.

AEIP represents its members' values and interests at the level of both European and international institutions. In particular, AEIP - through its working groups - deals with EU coordinated pension schemes and pension funds, healthcare, unemployment, provident and paid-holiday schemes.

Owing to the quality of its members and to the delegation of powers conferred to its Board, AEIP aims at becoming the leading body for the promotion of balanced paritarian social protection systems in Europe. AEIP promotes and develops programs and orientations aiming at the sustainability of paritarian social protection systems at local level taking into account the national specificities aiming at ensuring social cohesion in Europe.

Based thereon, AEIP prepares recommendations, proposes local programs and influences European decisions to safeguard and promote the interests of its members. AEIP thinks ahead and anticipate modern paritarian social protection systems that take into account changing economic and societal pattern. It furthermore seeks to find a new balance between and across generations.

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