AEIP input to EIOPA's Consultation on the Review of IORP II Directive

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European Association of Paritarian Institutions - AEIP

Do you have any comments on the executive summary?

The review of the IORP II Directive must remain within the scope of a minimum harmonization framework and should not touch upon issues of national social, labour (SLL), tax or contract law, or the adequacy of pension provision in Member States. As social institutions, the IORPs fall under the provisions of national SLL and are primarily subject to national supervision. Moreover, the review should adopt a principle-based approach and support proportionality principle which acknowledges the diverse landscape of IORPs within and across EU countries. Notably, we appreciate that the review does not aim to change the funding requirements or introduce capital requirements for IORPs as the current prudential rules guarantee a high-level degree of security. Also, the review should assess the need to improve cross-border procedures and assist cross-border activities, but importantly not through interfering with national SLL or tax law.

The IORP landscape among EU Member States is very heterogeneous in terms of scale, type of pension scheme, social and labour law basis, institutional design as well as contractual obligations. Given the diverse landscape of IORP across Europe, but also the fact that the vast majority of occupational pension funds are small and medium size, the proper implementation of the principle of proportionality throughout the Directive is of utmost importance. Notably, the adoption of a one-size-fits-all approach does not work for the IORP sector, as it generates unnecessary costs especially for small and medium sized IORPs. Such increased costs are detrimental for the members' benefits, as they destroy the affordability for many sponsors to organise an adequate pension scheme.

In its 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 will be particularly important to assess the implementation of proportionality and we are looking forward to see the results.

In its upcoming review the European Commission must underline that IORPs are inherently different from other financial market entities in the sense that the vast majority are 'not-for-profit', they play an important social role in pension adequacy, they do not have any shareholders and most importantly do not sell products, since employees often benefit from a mandatory affiliation to the pension scheme on the basis of their employment relationship. In addition, it must be acknowledged that the clarification and further provisions on addressing the triangular relationship between the employee, the employer (sponsor) and the IORP should be a priority guiding the review of the Directive.

It also must be recognized that second pillar pension schemes often have a paritarian structure, meaning that they are set up and managed jointly by (the national) social partners. IORPs have an important social function in supporting the EU economies and citizens as they ensure adequate benefits for old age income and at the same time, they work as much-needed automatic stabilizers in times of economic strain, as also the recent Covid-19 pandemic reaffirmed. Thanks to their joint decision-making process and due to the fact that they are most often managed by the social partners, they promote transparency, inclusiveness and democratic legitimacy.

AEIP underlines that the inclusion of social partners leads to better pension adequacy. Involvement of social partners leads to 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.

At the same time, IORPs are important institutional investors and can contribute to fostering long-term investment and sustainable economic growth, also in light of the development of the Capital Markets Union (CMU) as well as the much-needed transition to a climate friendly and digital EU economy. They also have a substantial role in maintaining financial stability and often act counter-cyclically by maintaining their long-term strategic asset allocation in stressed market conditions, meaning they rebalance and buy assets whose prices have diminished abruptly. Therefore, their role in the economy should be supported by prudential law and they should not be endangered by regarding them as individually choice driven investment vehicles.

Chapter 1. Introduction

Do you have any comments on the introduction?

Overall, we feel that the introduction does not take into too much consideration the triangular structure of paritarian pension funds into account, i.e. IORP – employer – employee. For instance, p. 13 writes 'Financial institutions providing services to individuals can offer their clients investment products with a variety of sustainability features…but in other MS it is more common for IORPs to have one collective instrument policy for all participants, who are likely to have different sustainability preferences.' Against this background we highlight that paritarian pension funds are set up by collective agreements so by construction they 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. 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 specific way that the sector operates as well as the particularities of occupational pension funds, we stress once again that the principle of proportionality must be ensured in practice for IORPs.

Another remark is that one of the basis for this advice is that the Commission invited EIOPA to provide an evaluation of the implementation and effectiveness of the IORP II Directive from a prudential and governance point of view. According to the call for advice the application of these standards must not lead to unduly burdensome requirements taking into account the diversity of the size, nature, scale and complexity of the activities of IORPs within and across Member States. Also, EIOPA should assess 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. AEIP would like to mention that for some of its Members (particularly for small and medium-sized IORPs) the cost

burden poses one of the greatest threat to their survival. For example, after the introduction of the IORP II Directive the number of IORPs in Belgium decreased already by 25%. These IORPs were mainly forced to move their assets and liabilities to commercial parties (e.g. insurance companies). We believe that this weakens the paritarian relationship that exists today, diminishes the interest of stakeholders in supplementary pensions and will have a huge impact on pension adequacy in the long term.

We believe that as a guiding principle any changes to the IORP II Directive should primarily aim to reduce costs and reduce reporting requirements. Therefore, 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.

Chapter 2. Governance and prudential standards

Q2.1: Does the IORP II Directive in your view achieve a proportionate application of prudential regulation and supervision to IORPs? Please explain your answer.

Yes / No

The diverse landscape of IORPs across the Member States and lack of sufficient data on the application of proportionality does not allow us to provide a yes or a no answer. Overall, the heterogenous nature 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 Consultation paper (page 31) 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 IORPs) have often been subjected to burdensome requirements, with NCAs not sufficiently taking into account the diversity of the size, nature, scale, and complexity of their activities. More generally, some of our Members believe that with a view at some NCAs more courage in applying proportionality is needed at national level.

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. Similarly, we feel that EIOPA could take proportionality more into consideration in its opinions and guidance. This is important as the right balance between minimum harmonization, heterogeneity and EIOPAs drive for supervisory convergence is often lost.

In its 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 will be particularly important to assess the implementation of proportionality and we are looking forward to seeing the results. It is also important to ensure that the principle of proportionality is adequately and coherently considered not only in the next review of the IORP Directive but also in other applicable

legislation, such as SFDR and DORA. Presently there is no common definition for the application of proportionality across the EU legislation (in horizontal legislation) that affects IORPs. A simpler and more unified approach should be based on the IORP Directive.

Additionally, 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. The review of the Directive shall not lead to any unnecessary administrative costs for IORPs, and we emphasise that the adoption of a one size fits all approach does not work for the IORP sector. Moreover, it should be noted that the Consultation paper 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. They explain that an IORP directive that would factually only be applied in a minority of Member States that have both well-developed occupational pensions as well as large IORPs, would quickly loose its legitimacy.

Key points on proportionality:

- The heterogenous nature 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.
- We feel that EIOPA could take proportionality more into consideration in its opinions and guidance.
- 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.
- The review of the Directive shall not lead to any unnecessary administrative costs for IORPs, and we emphasise that the adoption of a one size fits all approach does not work for the IORP sector.
- An IORP directive that would factually only be applied in a minority of Member States that have both well-developed occupational pensions as well as large IORPs, would quickly loose its legitimacy.

Q2.2: Should in your view the threshold for the small IORP exemption of 100 members be increased? If yes, do you agree with the proposed new threshold (both 1000 members and beneficiaries and EUR 50 million in assets) under option 1 in sub-section 'Small IORP exemption' of section 2.3.5? Please explain your answer and provide any alternatives.

Yes / No

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 criteria that contradict EIOPA's approach in this Consultation paper 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 Article 5. This new threshold is in line with the provisions in solvency regulation for insurers. As such it does not recognize the triangular relationship and role of social partners in most IORPs. It is crucial to take into consideration that IORPs are inherently different from other financial market entities. Any increase to the threshold in terms of millions in assets should take into account 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. They also add 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. However subsequently this same exemption is referred to in other EU horizontal legislation (e.g. DORA, SFDR,…) to apply "proportionality" on IORPs for the application of that legislation.

Some of our Members could welcome (see also remarks above) 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.

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.

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

Considering the points above we will welcome further discussion with EIOPA to further exchange on the matter, especially taking into account that the proportionality principle has an impact on the operations of smaller IORPs and their main aim which is to provide occupational pensions to members and beneficiaries.

Q2.3: Do you agree with the draft advice to restrict the proportionality formulations throughout the IORP II Directive to 'proportionate to the nature, scale and complexity of the (risks inherent in the) activities of the IORP', i.e. removing the 'size' and 'internal organisation' criteria? Please explain your answer.

Yes / No

We do not agree with the proposed restrictions. Size is the easiest way to decide on proportionality, thus keeping this element is essential. Size is an important criterion when applying proportionality and it can be easily assessed and quantified i.e. it is easy to understand and measure. As such, it can provide legal certainty and predictability for IORPs and encourage a uniform approach. Moreover, size is also linked to the question of the low risk profile IORPs. Against this background 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'. Also, this could lead to a misinterpretation. (i.e. to find an appropriate definition of a 'risky IORP' appears difficult). 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.

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

It is important that EIOPA does not restrict NCAs from using such key criterion(s) (size and organisational structure) when supervising the IORPs and implementing the proportionality principle. Good internal organisation reduces the operational risk. Additionally, EIOPA in its consultation paper uses size to address the identified issues with regard to proportionality in the option 'small IORP exemption in Article 5' and in option 'definition of low-risk profile IORPs'.

Q2.4: Do you support option 1 in sub-section 'Low-risk profile IORPs subject to proportionality measures' of section 2.3.5 of defining a category of low-risk profile IORPs in the IORP II Directive and allowing Member States to exempt such IORPs from certain minimum standards in the IORP II Directive? Please explain why or why not. Which minimum standards in the IORP II Directive should in your view be considered for the possible exemptions or should be applied in a less onerous way?

Yes / No

We welcome the idea of EIOPA to extend the use of proportionality and to allow Member States to exempt certain IORPs from certain minimum standards in the IORP II Directive. It is difficult to judge this proposal without knowing which minimum standards are envisaged. However, the heterogeneity of the IORPs throughout Europe makes it difficult if not impossible to have a single definition which IORPs should benefit from this exemption. The Expert judgement of the NCA should be key in determining which IORPs could be exempt from certain minimum standards (e.g. on a comply or explain basis).

However, we believe that the definition of "low risk" is quite subjective and the criteria questionable; we do not believe that this can work in practice. As this Directive is aimed at offering minimum harmonization, defining a one-size-fits all criteria to define a uniform "low level of risk" at European level would go beyond the objectives of the Directive. In principle, we should remain careful when prescribing a certain institution in a given risk category, especially when it relates to complex risk measurement on complex institutions.

We support the promotion of principles of good risk management, but not homogeneous and standardized measurement and requirements. Moreover, as EIOPA reports well in the Consultation paper, 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, EIOPA's considerations on the proportionality principle should be aimed at alleviating the burden on certain IORPs. The chosen approach would have the opposite effect.

The heterogeneity of the IORPs throughout Europe makes it difficult to have a single definition of which IORPs should benefit from this exemption. Also, we are unable to judge this proposal without knowing which minimum standards are included. Moreover, the result could be that the 'no-low risk' category would face higher regulation and more harmonisation. We refer to the answer on Q2.7 for the rationale.

Q2.5: The analysis of options in sub-section 'Low-risk profile IORPs subject to proportionality measures' of section 2.3.5 proposes four conditions for IORPs to qualify as 'low-risk profile IORPs', in line with the conditions proposed by EIOPA for life insurers to qualify as 'low-risk profile insurance undertakings'. Do you have comments on the four proposed conditions or suggestions for other conditions? If yes, please provide your comments or suggestions for conditions to define 'low-risk profile IORPs'.

Yes / <u>No</u> *(if no is selected text cannot be added in the consultation)*

Q2.6: The analysis of option 2 and 3 in sub-section 'Low-risk profile IORPs subject to proportionality measures' of section 2.3.5 proposes proportionality measures relating to the IORP II governance standards that low-risk profile IORPs would be allowed to use. Do you have comments on the proposed proportionality measures or suggestions for other proportionality measures to be used by low-risk profile IORPs? If yes, please provide your comments or suggestions for proportionality measures.

Yes / <u>No</u> *(if no is selected text cannot be added in the consultation)*

Q2.7: The IORP II Directive takes a minimum harmonisation approach, laying down minimum governance and prudential standards. If the concept of low-risk profile IORPs was to be introduced in the IORP II Directive, should institutions that are not low-risk profile IORPs be subjected to standards exceeding the current minimum, as proposed in the analysis of option 3 in sub-section 'Low-risk profile IORPs subject to proportionality measures' of section 2.3.5? Please explain your answer.

Yes / <u>No</u>

We do not agree with the low risk profile option, and we are against creating two categories of IORPs. We observe that the "no-low risk" category IORP would only exist in a handful of Member States and such an outcome would violate the subsidiarity principle. The principle-based approach in the IORP II Directive already enables Member States to take account of the national frameworks and the different structures of IORPs. It is very important to keep the character of minimum harmonisation.

The introduction of new measures should not be used to introduce higher standards for the other IORPs through the IORP II Directive review, this shall remain at the national competence of the Member States and NCAs.

Q2.8: Do you have any other suggestions to ensure a proportionate application of the requirements in the IORP II Directive? If yes, please provide these suggestions and explain why they should be considered.

Yes / No

In many countries the implementation of the IORP II Directive implied a significant effort and incurred a material cost impact for IORPs to adapt, especially for small and medium-sized IORPs. This in many cases results in a reduction of benefits for the members and beneficiaries. Such an impact was further exacerbated by the introduction of other EU-wide legislation such as DORA and SFDR and including the statistical requirements by ECB and EIOPA. On this matter, we notice that the EU legislator tends to legislate horizontally for the entire financial sector, yet in most of the cases without taking into consideration the unique nature of the IORPs and the proportionality principle. We stress once again that IORPs are inherently different from other financial market entities. IORPs are mainly 'not-for-profit' and employees often benefit from a mandatory affiliation to the pension scheme based on their employment relationship. IORPs by their nature are second-pillar entities – thus, they do not belong to the private competitive economy of third pillar financial undertakings. Second pillar pension schemes often have a paritarian structure, meaning that they are set up and managed jointly by the national social partners. Paritarian pension funds, in particular, are set up by collective agreements and therefore by design represent the interests of members and beneficiaries, irrespective of whether they are DB or DC.

Regarding proportionality, most IORPs are very small compared with pure financial institutions they therefore have limited scope to represent systemic risk to the financial system. It is important that the EC takes into account the characteristics of IORPs and considers the cumulative impact of individual rules (and the coherence of the overall regulatory framework to avoid the risk of inconsistencies, overlaps and duplications between the different EU legislations.

As a guiding principle any changes to the IORP II Directive should have a strong focus on proportionality and should primarily aim to reduce costs and reduce reporting requirements, particularly for certain IORPs (small and medium-sized IORPs). We feel that further assessment is needed to assess how the proportionality principle has been implemented and its effectiveness. For instance, some of our Members (in particular the small and medium-sized IORPs) have mentioned that they have often been subjected to burdensome requirements, with NCAs not sufficiently taking into account the diversity of size, nature, scale and complexity of their activities.

This said is important that NCAs who are better placed to supervise the national situation aim for proportionate application of the legislation applicable to IORPs; EIOPA should take more into consideration proportionality in its opinions and guidance; 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.

Additionally, throughout the IORP Directive it might be possible to consider introducing more principle-based requirements that could be filled in by IORPs and under supervision of NCAs. Paying more attention to the aims behind requirements may also open up possibilities for proportionality. As an example, we would like to mention the PBS. In the context of compulsory participation and usually only little choice for options, a PBS should not include information on which members cannot act. However, a minimum level of information set by the IORP directive and other directives, should be made easily available to members, beneficiaries and other stakeholders. The manner in which this is done, could vary according to national specificities.

If one looks at the specific proposals in table 2.1, the differences proposed for different types of IORPs come down to the frequency of things being done. We would argue that the frequency is not necessarily a good measure for the quality of doing these things.

Q2.9: Should in your view explicit requirements be introduced in the own-risk assessment (ORA) and the supervisory review process (SRP) on liquidity risk assessments for IORPs with material derivative exposures? Please explain your answer.

Yes / No

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 have 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 at the beginning of the Corona crisis and during the recent strong, albeit gradual, interest rate increases.

It should be noted that 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. As such 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 national supervisors should indeed oversee whether EU IORPs with significant derivative portfolios are able to meet margin requirements. Mandates for this supervision exist under IORP II and its national implementation. The current legal framework includes an assessment for different kind of risks, including liquidity risk in the IORPs "own risk assessment".

Overall, AEIP supports that is important to maintain liquidity risk in line with the minimum harmonisation principle. Whereas this question makes reference to material derivative exposures, this nowhere to be found in the Consultation paper. It should be 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 would

note that the additional cost of this proposal is unclear. A quantitative cost analysis should be carried out before introducing any such measures at the EU level.

However, we believe that when it comes to the ORA focus should not be only on the liquidity risk assessment as the IORPs shall not lose track of the processes on other risks.

Q2.10: Do you agree that in some situations conflicts of interest between IORPs and service providers can give rise to specific risks which justify requirements on the management of conflicts of interest with the service provider connected to the IORP? Please explain your answer with relevant supporting evidence.

Yes / No

We note that the MIP concept is vague and give lots of room for wrong interpretation. Still we believe that it is important to have in place a transparent framework for risk assessment. Yet, this should be done in line with the minimum harmonisation principle and should not introduce any 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. We see no added value to go beyond what already applies in IORP II. We do not support the advice of EIOPA that requires all IORPs to submit and regularly review 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.

Also paragraph 2.5 of the consultation is not clear and the legislative proposals made seem much broader than the issues identified. . The first sentence of paragraph 2.5.1 refers to an unnamed EIOPA report from 2017. Are we correct in saying that the consultation refers to "2017 Market development report on occupational pensions and cross-border IORPs"? This report notes an emerging trend of IORPs set up by service providers for multiple unrelated employers and sets this clearly apart from IORPs that are established by a sponsor or a group of sponsors (e.g. for industry-wide schemes). In the 2017 report, EIOPA raised the question whether from a supervisory perspective this affects the triangular relationship (employee-employer-IORP) and how this could impact on the governance and management of IORPs.

If this is the issue, then it is important to note that two further characteristics of a "multi-sponsor IORP" are in our view essential:

1. There has to be an IORP that is established by a service provider;
2. This IORP is aimed at multiple unconnected employers.

Thus, traditional IORPs with a single pension scheme that are established by and operate for a specific employer or a specific economic sector, should be out of the equation. The word "unconnected" is important here, because in the 2017 report EIOPA clearly distinguished this new phenomenon also from traditional industry-wide schemes.

Once we agree on which situations we look at, it becomes clearer what problems there could be. In fact, the issue is twofold. First, the influence of service providers setting up IORPs may result in these service providers having much more influence over these IORPs than is the case of traditional IORPs that outsource (part of) the management of a pension scheme. Second, the link between sponsors and IORPs may be less strong than in traditional IORPs.

Also, service providers that are independent from the IORPs whose pension schemes they (partly) manage, may have commercial interests that conflict with the interests of members and beneficiaries. Yet, in case of the three largest Dutch pension services providers APG, PGGM and MN a further safeguard can be found i.e. their shareholders are directly or indirectly IORPs themselves, or - in PGGM - members and beneficiaries. In practice, the largest IORPs play an important role in the governance of these three pension services providers.

We agree that there might under circumstances be a legitimate concern for EIOPA and NCAs. However, the present formulation of the legislative proposals in the Consultation for a definition of "service provider" as well as Art. 21-6 and Art. 31 are far too broad:

The proposed definition of service provider would for example include the services of a caterer operating the canteen of an IORP, while the issue described by EIOPA only relates to a small subset of pension services providers. The very few sentences EIOPA uses on p.52 to explain its broad proposals do not seem to be based on any analysis of actual problems, but just a postulation that conflicts of interest may arise.

It seems problematic that the proposal on Art. 9 seems to indicate that IORPs should "review the business plan regularly" and "shall promptly notify material changes to the business plan to the competent authority". This seems an excessive regulatory burden that would also affect existing paritarian IORPs that are not considered part of the issue of MIP.

Q2.11: Do you agree that the conditions of operation for IORPs should be strengthened to ensure the proper functioning of the internal market and protect adequately the rights of EU members and beneficiaries from potential conflict of interest between IORPs and service providers? Please explain your answer with relevant supporting evidence.

Yes / <u>No</u>

AEIP believes that it is important to have in place transparent framework for risk assessment, yet this shall be done in line with the minimum harmonisation principle and shall not introduce any changes to the IORP II Directive.

Also, the 2017 Market development report on occupational pensions and cross-border IORPs mentions multi-employer cross-border IORPs that are set up by service providers aimed at multiple unconnected

employers, and para 2.5.2 of the Consultation Paper 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 specially 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 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.

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

Any new provisions shall not create any additional burden to IORPs and have to 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.

At the same time, however, we are cautious that supervisory costs from reporting should not become too high. Therefore, 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 behavioral supervision. It would be good to further specify the scope, content and frequency of data collection. We would further appreciate it if a recital in the Directive could specify that NCAs and EIOPA should be cautious in collecting data, to minimize reporting costs for IORPs.

We oppose the second sentence of EIOPA's advised amendment to Article 50, stating "This shall also include all regular information requested by EIOPA necessary to carry out its duties". It is 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.

We are in general against the introduction of implementing technical standards in the IORP Directive, considering minimum harmonization and the primacy of NCAs. We appreciate that EIOPA does not advise implementing this policy option.

Q2.13: Do you have suggestions to resolve the double reporting burden in some Member States, i.e. one template for the purpose of national supervision and one for the purpose of reporting to EIOPA? If yes, please provide these suggestions.

Yes / No

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.

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

We agree with EIOPA that no harmonised solvency rules should be introduced, as stated in EIOPA's opinion on a common framework for risk assessment and transparency for IORPs (April 2016) and in this consultation paper. Yet, it should be noted that 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 advise EIOPA to abstain from reiterating its advice as of April 2016 that a common framework for risk assessment and transparency should be introduced. Calculating the Common Balance Sheet (CBS) and reporting it to the national supervisory authorities 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. In particular, market consistent valuations of liabilities are unreliable and too dependent on arbitrary assumptions, approximations and simplifications. 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.

Q2.15: Should the definition of sponsoring undertaking in Article 6(3) be expanded to include professional associations? Please explain your answer.

Yes / No

A clear definition could help avoiding any future complexities.

Q2.16: Should the definition of regulated market in Article 6(14) be expanded to include equivalent markets in third countries? Please explain your answer.

Yes / No

We agree with the proposal. A clear definition could help avoiding any future complexities.

Q2.17: Should multilateral trading facilities (MTFs) and organised trading facilities (OTFs) be specified in Article 19(d) in order to ensure the same treatment as regulated markets? Please explain your answer.

Yes / No

We agree with the proposal. A clear definition could help avoiding any future complexities.

Q2.18: Should the requirement to have an ORA policy, including a specification of its main components, be introduced in the IORP II Directive? Please explain your answer.

Yes / No

The benefits of implementing such a requirement seem uncertain as the own risk assessment (ORA) is already defined in the IORP II Directive. Additional policy document requirements will further increase the cost for IORPs. This is particularly burdensome for small and mid-sized IORPs and could also go beyond the minimum harmonisation. IORPs are subject to many regulations, which already requires a significant level of reporting.

Q2.19: Should a provision be introduced in the ORA that the risk assessment should take into account the risk tolerance limits approved by the IORP's management or supervisory body? Please explain your answer.

Yes / No

This provision is already in place in some Member States such as Belgium, the Netherlands and Germany. The way forward should take into consideration the minimum harmonisation and that national risk measures and procedures are not impacted. We see no compelling reason to introduce further regulation on this subject. It will only lead to supplementary costs without introducing any additions benefits to the members and beneficiaries. Such measures should not lead to an erosion of the own risk assessment. We

do not support steps that have as major objective to shift the IORP framework into the direction of the Solvency II framework.

General Question – Do you have any other comments on the following sections in chapter 2: No

Chapter 3. Cross-border activities and transfers

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

Further evidence is needed to provide an answer to this question as clear reasoning and grounds are necessary. Yet, we would like to refer back to our reply in Q.2.11. As such it could be considered to provide for a host Member State the option to not allow the provision of pension schemes by IORPs operating in this very special mode. This shall be done in line with the minimum harmonisation principle and shall not lead to any mandatory changes for IORPs.

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

Our Members have different views on the policy options. Still, all of our Members believe that the review should assess the need to improve cross-border procedures and assist cross-border activities, but importantly not through interfering with national SLL or tax law.

Some of our Members could agree with either Option 0 or Option 1 (with a majority of persons which responded to the request). In their view the definitions of majorities needed for domestic transfers should not be decided at a European level, but be regulated in the national laws of the Member States. They explain that on the issue of majorities, they read (on p. 92) that in a number of Member States a majority of members needs to approve cross-border transfers, instead of (as in other Member States) a majority of members who have responded to the request. These Members, irrespective of the Options suggested by EIOPA, are in favor of relating the approval to the majority of votes cast. Adding that a majority of votes cast higher than 50% may de facto be easier to meet than a majority of 50% of all members. From a Dutch perspective - as a host country to many cross-border IORPs - it is a serious concern if cross-border transfers would be directed to commercial parties under the IORP Directive while engaging in regulatory arbitrage and/or bypassing social partners.

Some other Members support option 2 where there is a non-discrimination definition of majority, i.e. the same for domestic and cross-border 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. These Members see no reason why different majority rules could/should apply within the EU for domestic and cross-border transfers. 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. These Members also add that a number of 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.

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

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 in order 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.

It is relevant 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. However, 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 SLL or tax law (social partners cannot operate cross-border, as social and labour law are national competencies; and the product of their joint institutions (IORPs) cannot (or can hardly) be offered in a cross-border dimension).

General Question – Do you have any other comments on the following sections in chapter 3:

Section 3.2.: Implementation and effectiveness:

Par. 3.2, (p. 77): EIOPA observes that the number of cross-border IORPS "has stopped expanding". However, this is not entirely a correct observation, because this number has even decreased (primarily due to Brexit). In this respect we refer to the EIOPA consultation document itself: (i) par. 3.5.2, p. 86) which mentions a "substantial drop" of 73 to 33 (by the end of 2020) and (ii) par. 3.5, p. 85 mentioning a further drop in 2021 from 33 to 31.

Par. 3.2.1 (p. 78): A majority of the NCA's was satisfied about the functioning of the cross-border provisions in IORP II and the EIOPA-decisions which are based on these provisions. This could be considered as an argument for EIOPA for not advising significant changes in the cross-border provisions in the IORP II Directive now to the Commission. Additional arguments in this respect are the observations (i) (p.79, third Alinea) that many NCA's have no experiences with cross-border provisions and as a result cannot evaluate the functioning of these provisions and (ii) (par. 3.2.3, p. 81) that the majority (15) of NCA' could not identify any obstacles for cross-border activities and transfers.

Section 3.5.: Previous EIOPA Reports:

P. 86: EIOPA establishes a link here between cross-border IORPs and her envisaged tightening of regulations applicable for MIP's. In this respect we refer to our argumentation with regard to Par. 2.5.

Par. 3.5.3 (in citing EIOPA's most recent report on the market developments of IORPs) provides for an inventory of reasons identified by NCA's why European companies do not consider cross-border activities. We consider it remarkable that none of these reasons directly relate to IORP II, which in our view can be considered as an additional argument for not modifying the cross-border provisions in IORP II now. The same goes for the -logic- conclusion (p. 88, last alinea) that "the majority of practitioners did not believe that the IORP II Directive would have significant impact on the future developments of cross-border activities….".

We observe that the large majority of IORPs in the EU seem to have no ambitions in the sphere of cross-border activities.

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

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

Overall, AEIP supports 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.

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.

The communication of pension benefit information is a major cost factor for IORPs. This is especially the case where legislators prescribe a detailed format and a standard template. The creation of these documents is very complex and expensive. AEIP is critical of rigid prescription of a standard format, especially in the case of pension schemes where members do not have choices. The creations of these documents is very complex and expensive. 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.

National specificities of pension systems and pension schemes should be taken into account. AEIP opposes Option 2 of EU level standardisation of the PBS format. We think the potential benefits of comparability

would be for a relatively small group of mobile workers, while all pension fund members and beneficiaries would suffer from less comprehensible information, that is not adapted to the national pension landscape.

We note that European pension stakeholders collaborate in the European Tracking Service (ETS) to inform mobile workers in the EU comprehensible information on European pension landscapes, helps them find their pension providers and provides them with a personal pension overview. AEIP collaborates as a member of the ETS. We prefer the stakeholder-driven approach of the ETS as a better option to provide people with a European pension overview, over the top-down approach of Option 2.

There is room for improvement in pension benefit communication. 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 (PTSs) 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. PTSs have the potential to provide superior comprehensibility, aggregation and comparability to the PBS.

The state of play with regards to the PBS is very different in various Member States. In some Member States, the PTS fulfils the goals of the PBS better than the PBS, effectively making the PBS redundant. In others, IORPs wish to be able to make PBSs available exclusively through the PTS, to provide members and beneficiaries a complete pension overview in one location. In yet other countries, the PTS in still under construction.

AEIP promotes an approach to the PBS that reflects the diversity between Member States. According to the principles of minimum harmonization and subsidiarity, Members 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.

Moreover, an approach should be future oriented, so that Member States and IORPs are able to innovate to provide beneficiaries with good and cost-efficient pension benefit information and as such a comprehensive view on their future retirement income. Overall, we support that there should be more freedom for pension funds to layer and target information. Member States and/or IORPs should be able to decide how to share information as they best know what information needs to be shared and communicated to their members and beneficiaries.

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

AEIP supports that PBS should include only relevant information on pension benefits at a personal level. Including other information will unnecessarily create a very long document. It should also be taken into account that such a summary could be a very complex text and could create more uncertainties than providing clear information.

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, which is

to provide an overview of retirement income provided by IORPs in order to improve the adequacy of savings.

We are in favour of option 0 – no change.

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

Information needs to be changing over time personal and actionable in order 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.

In this consultation, EIOPA advises to lengthen the PBS substantially by adding more information points. In general, we think that approach adds to the problems of the PBS as is, rather than improving it. Making the PBS longer is at odds with the design objectives of the PBS, as outlined by EIOPA in the past, of making 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 Article 40 as Supplementary Information, rather than Article 39 on the PBS. We would also propose to transfer paragraphs 1f, 1g and 1h of Article 39 to Article 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 on the basis of their personal situation.

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

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. PTSs 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 PTSs. 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 in order 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 in favor of 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.

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

We privilege Option 0 over Options 1 and 2, as the current approach to providing an appropriate channel or medium for receiving communication is well balanced. IORPs decide how to deliver the PBS and other documentation. In the current situation, members' and beneficiaries' interests to reeive information in their preferred communication channel or medium are already safeguarded. They can choose not to leave their email address or request information in paper.

Option 1 would mean a technical and costly effort. We do not think added value for the members weighs up to these costs. In any case, the IORP must be allowed to define their own default format. Furthermore we do not believe at all in the added value of providing the PBS on a quarterly or semi-annual basis. Members and beneficiaries are used to annual information. For most of them these retirement benefits are still far away. As such, a quarterly or semi-annual indication of accumulated benefits and projected benefits would be overkill.

We do not see added value in the requirements given in Option 2 for IORPs to digitalise their PBS and/or other documentation. When it comes to communication tools and channels, one size does not fit all. Regulating a certain medium of communication locks the use of such medium across time. For us it is important that information can be presented in a layered approach. Digital tools are ideal to do so, but other multi-channel solutions can be envisaged. IORPs should get the leeway to organise this in the most optimal way, taking into account cost efficiency but also habits and preferences of members and beneficiaries.

IORP-II articles 36 and 38 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.

AEIP supports that there should be more freedom for pension funds to layer the 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 PTSs. Considering the principles of minimum harmonization and subsidiarity, Member States should have the freedom in choosing how to use synergies between the PTS 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.

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

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

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. As IORPs are in most cases set up by the social partners, they act of their own accord in the best interests of their members and beneficiaries, which also means that they have to operate cost-effectively in order 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, EIOPA 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, the current IORP

regulation includes a provision on reporting costs and Member State have implemented this in their national legislation. For instance, in Belgium this also 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 these information are unnecessary or even confusing. Anyway, these new changes and practices have been implemented very recently. Consequently, some of our Members first prefer to assess the outcome of the current practices before proceeding with new developments. Taking this into consideration, we believe that Member States are better placed to regulate cost reporting.

We think EIOPA demands of pension funds foregoes on many complexities on breaking down and attributing costs that could mean considerable extra costs for pension administration. We doubt whether the benefits for members weigh up to these costs. EIOPA advocates better comparability of cost information. We doubt whether their advised amendments to IORP II will offer such comparability. In the absence of definitions of 'costs of administration', 'investment costs', 'assets' and 'portfolio transactions', costs can be accounted for very differently. Providing such definitions will be hard, considering the heterogeneity of the pension sector.

EIOPA advises (Article 39, first bullet) that administration costs should be broken down and reported to facilitate comparability. Administration costs are however incomparable, as funds can choose to provide a higher or lower level of service to its members, with consequently different cost levels. This can be justified by members' needs and preferences. Cost comparison, when overdone, create incentives for pension funds to decrease service levels, which is undesirable.

EIOPA further advises (Article 39, first bullet) that investment costs should be broken down to facilitate comparability. We think this would give an incomplete and undesirable impression of costs. Investment in different assets have widely different costs. Illiquid assets tend to have few transactions, meaning there might be high transaction costs in a year when assets are acquired, but zero transaction costs in subsequent years. Some asset classes come with higher costs, which might be perfectly justified because they yield higher return or they might diversify the risk of the investment portfolio. Information on investment costs would therefore have to be complemented by the risk return profile of the assets, the frequency of portfolio transactions and the investment returns.

There could be further challenges in showing investment costs in monetary terms (Article 39, first bullet), as investment returns and risks could be attributed differently among pension fund members. It could be the case that a pension fund invests money collectively for groups of members with different investment options (e.g., defensive and offensive). Or that returns and risks are redistributed within the fund based on lifecycles. Or that costs are not (all) borne directly by the members.

Estimating how costs impact final benefits (Article 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.

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

It should be noted that projections depend a lot on the applicable schemes and that in general it is very challenging to give projections. Also, the diversity of IORPs complicates default scenarios which are suitable for all schemes. The current IORP regulation includes a provision on reporting projections and Member States have implemented this provision in their national legislation. The IORP Directive should not prescribe indicators for what scenarios to use in projections. For example, inflation is different between Member States. We therefore believe scenarios should continue to be specified at the Member State level.

A point of attention 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.

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

No, we do not see any benefit. Members and beneficiaries in different countries and different sectors can have different expectations with regard to tools and the setup of projections. A more common basis at EU level may lead to neglecting specifics on country or IORP level and may unnecessarily constrain IORPs in producing a more tailor made and member-oriented statement.

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

The concept of business conduct requirements is not deemed necessary. It does not fit for the vast majority of IORPs as this does not recognise the role of social partners in the structuring and implementation of the IORP. The introduction of business conduct requirements will probably lead to necessarily require extensive reporting from IORPs to supervisors, which will raise costs for members.

IORPs often have a paritarian structure, meaning that they are set up and managed jointly by (the national) social partners, they are pension institutions with a social purpose that provide financial services. They are responsible for the provision of occupational retirement benefits and should therefore meet certain minimum prudential standards with respect to their activities and conditions of operation, taking into account national rules and traditions. However, such institutions should not be treated as purely financial service providers. 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, IORPs are generally functioning well and effectively. Many of them exist 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. Implementation costs would indeed affect both members and IORPs.

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. 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, labor 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.

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

See reply provided in Q.4.9.

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

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

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

Paritarian governance structures already protect the interests of all stakeholders involved.

Paritarian pension funds in particular 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 labor 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.

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 provides 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. Paritarian pension funds in particular are set up by collective agreements so by design they do not present any conflicts of interest and they represent members and beneficiaries. It is also undesirable, as pension fund boards should balance the interests of all stakeholders involved, not only those of (prospective) members and beneficiaries. We believe that if any principles for a duty of care are introduced these should be principles-based. Nevertheless, most of our Members are cautious against the introduction of any fixed costs due to a possible introduction of a duty of care requirement.

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.

AEIP opposes European legislation of choice architecture.

We oppose European legislation of choice architecture. Because of the diversity of IORPs and their schemes, we see limited added value in the requirements regarding the appropriate choice architecture. Within many Member States and IORPs, members have no or few choices when it comes to their pensions. The effectiveness of a choice architecture is highly dependent on the number of choices available to the member, the design of the scheme and the tools that pension funds have to help members take decisions. Considering the diversity of choice on pensions between member states and pension funds, European legislation does not seem appropriate.

Choice guidance also goes beyond the scope of minimum harmonization and touches upon the design of the pension scheme. We therefore also do not support the last part of the proposed text: "Member States shall ensure that every IORP […] provides prospective members, members and beneficiaries with the necessary tools to properly assess the choices or options provided by the IORP."

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

If a duty of care is introduced, it should only apply to those IORPs that are responsible for the plan design and offer complex choices. It should be principle based and phrased in such a way that other IORPs will not be subject to any obligation. Unnecessary additional costs should be avoided.

We think a duty of care should not be framed in general terms. Considering choice is very closely connected to the design of the pension scheme, we are of the opinion it falls outside the remit of what the IORP Directive should be able to regulate. Moreover, the broad differences in pension choice between IORPs and Member States would make it hard to do so.

We do not think PARP requirements should apply to pension funds.

Do you have any other comments on the following sections in chapter 4:

General evaluation of the functioning of the PBS:

The review of the provisions on communication should start from the premise that information does not equal communication. PBS information needs to be changing over time, personal and actionable in order to be relevant. Communication to members and beneficiaries should be done in a simple and comprehensible manner, while layering should enable members who want to know more to access more detailed information. 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. Additionally, opinions vary between our members on the impact of the Pension Benefit Statement (PBS) to information provision. Some AEIP members believe that the PBS provides a clear format and, having gone through, implementation, want to avoid new implementation costs so quickly after implementation. Other members believe it inhibits a more ambitious, targeted and digital approach to communication.

Consequently, AEIP supports that there should be more freedom for pension funds to layer the 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. Additionally, IORPs that lack the ability to develop new layered digital communication tools could continue to use the current PBS, but those that want to improve communication should be able to do so. National supervisors should be tasked to ensure that the communication objectives should be met.

Pension tracking services (PTS) are proving to be highly effective tools to communicate information and are more effective than the PBS as they can combine pension information of different sources. The PTS combines information from different first and/or second pillar providers and typically is better known by the general public than the PBS. The Commission should consider providing flexibility to member states with PTSs to incorporate the PBS as part of the communication rules. It should be possible for Member States to transfer parts of the pension benefit communication to national pension tracking systems to enable integration with other retirement benefits (First pillar benefits, benefits coming from other pension institutions, benefits stemming from previous careers with other employers, etc…).

Full harmonisation of pension communication is undesirable because of the many diverging national components of pension systems that must be taken into account to make information relevant and personal. Pension communication is a complex issue because of the existence of multiple factors which have an impact, such as the benefit at retirement age, the current provisions, the impact of inflation, the impact of a future salary increase, the impact of the financial markets as well as the combination of communication on second pillar pensions with this of the first and third pillar. Pension communication should reflect the particular setup and character of IORPs, in accordance to the proportionality principle and always taking into consideration the limited cost capacity of IORPs.

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 labor 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.

Information in the PBS 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. Despite the fact that IORPs are communicating about a pension benefit and not an investment product, pension scheme information will be diluted due to the sustainability disclosures: several pages of information on investments in particular, 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. They do not contribute to a personal overview of retirement income. Including these requirements makes the PBS longer and more complicated. Although we agree that information on these aspects is important, and should be up to date and easily accessible, other means of communication are more appropriate for that than the PBS.

Chapter 5. Shift from defined benefit to defined contributions

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

In our view the proposed options may address theoretical risks for pure DC plans, but do not necessarily address the specificities of different schemes at the national level. Also, 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 Own Risk Assessment IORPs already assess the risks of members and beneficiaries in relation to their retirement benefits.

In option 1, 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 IORPs where members are represented by paritarian social partners, their 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. According to the prudent person rule, factors like member characteristics, future contributions and statutory pensions should also be factored in. A number of our Members are in favour of Option 1. Nevertheless, they underlined that if Option 1 is adopted it should have due consideration for the prudent person rule. Also, it would be good to further specify the review period of the investment strategy; we would suggest setting it at five years.

In option 2 we would like to emphasise that one should keep in mind that some of the mentioned principles would cause significant additional costs which in the end would reduce the future pensions of the plan members. Especially the mandatory introduction of stochastic scenarios would be costly as most IORPs would have to purchase such scenarios from third parties and would need additional capacities to calculate, evaluate and interpret the results. Consequently, we are against the introduction of stochastic scenarios into such common principles. If option 1 or 2 would be selected the rules should only apply to pure DC plans.

Whereas a number of our Members are in favour of option 1, some of our Members prefer option 0 i.e. no change. They point out that additional requirements as described in option 1 and option 2 might be appropriate for some pension plans/IORPs but are not appropriate for others. Precisely, some of our Members are afraid that the cost increase related to option 1 and 2 will reduce the benefit for the members and beneficiaries, this cost increase is specially burdensome for small and medium-sized IORPs (as already explained above).

For the way forward any amendment of the IORP directive should be drafted in such 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 taking into account the size, nature, scale and complexity of the pension plan as well as IORPs' size and internal structure. The introduction of option 1 and 2 should not lead to the introduction of a common framework for risk assessment.

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

We feel the analysis of the effects of choice in investments for members and beneficiaries, if and when applicable, could have been more extensive. Experience from different countries taught us that not all schemes that have introduced such choice have resulted in better pension outcomes for members, partly because many people find taking financial decisions quite complicated. For a negative example we would mention Chile.

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

This question appears to contain an error. We answer the question in line with para 5.5.2. which is about supervisory reporting. The issue of reporting to members and beneficiaries is dealt with in the context of chapter 4 of the Consultation Paper.

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. 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.

Further assessment is needed to be able to state down the advantages and disadvantages.

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

We believe that this is a positive development as this can enhance transparency as well as create a better supervisory culture that would better illustrate the criteria and the outcome of the risk assessment framework.

Do you have any other comments on the following sections in chapter 5:

Europe and European pensions markets are shifting:

AEIP acknowledges that there is indeed since more than 30 years a trend in Europe towards DC, but at the same time it is cautious against a binary and simplified understanding of this trend. The definition of DB and DC used most often is one that is based on the question of how the entitlements are administrated

(as benefits or capital). This should not be confused with the question of whether members' pensions are 'protected' or not. It is very well possible to have a DC system with sponsor support (e.g. Belgium is considered as a DB system in OECD definitions) or a DB system in which the benefits can be cut (e.g. the Netherlands). This latter question is more important when thinking about communication rules and risk-management rules. AEIP would be very concerned if a misinterpretation of the definition of DB and DC would lead to inadequate rules for IORPs.

Background information on DC:

We do not agree with the introduction of a new definition of DC schemes as this could lead to more confusion. For instance, we refer to the current Dutch system.

In the vast majority of current pension schemes implemented by Dutch IORPs no obligation exists anymore for sponsoring companies to make up for negative outcomes, nor do the IORPs themselves provide guarantees to its members. Instead, it is possible not to pay full or partial indexation, and it is even possible to reduce pension rights and pension payments. Although the system still operates on the basis of DB, risks are generally already shifted towards the collective members and beneficiaries. Thus, by EIOPA's own broad definition, the current Dutch system could already be categorized as DC where the participants bear the risks. This in contrast to the DB and DC commonly used definition in the Netherlands, which entails that the present DB schemes are administered in terms of (non-guaranteed, nominal) benefits, rather than capital.

The pension reform in the WTP legislative proposal that is now in the Dutch Senate, aims at maintaining the strongest points of the existing pension system, while modernizing the system to align it with the changing nature of thethe labour market, and to allow for more direct indexation or benefit reductions. The cornerstone of the system, compulsory participation, will be maintained. This is true for other important elements, i.e. risk sharing and solidarity. The social partners continue to support the general ambition level of the system, defined as a replacement rate of 75% after a career of 40 years by the social partners. Governance of IORPs will remain with social partners who nominate boards of IORPs and set the pension schemes.

The reform will provide a choice between two models for pension schemes with corresponding contracts: (1) solidarity scheme and (2) flexible scheme. The former will remain almost completely collective,and will contain only very limited choice (no investment choice). Returns will be attributed according to age which will allow young people taking more risks than elder people, but investments will remain collective. A smoothing system with a buffer will be created to ensure that pension outcomes cannot be very volatile from year to year;several solidarity mechanisms remain. The flexible system will allow for more choice (between fixed and variable annuities, but also the possibility of investment choice), but will nevertheless contain a risk-sharing buffer and will not become completely personal either.

The expectation is that a majority of IORPs representing a very large majority of members and beneficiaries will opt for the solidarity scheme.

Our Dutch Members make the following observations on the risks for DC savers:
Retirement risk: the combination of maintaining present (high) premium levels in the NL with a buffer mechanism to avoid excessive differences in outcome at retirement years, should lead to retirement income risk not being bigger than in the present Dutch DB system. As explained, under the present system there is already no sponsor guarantee and no guarantee from the IORP. Under the new system the uncertainty may be a bit bigger, while financial outcomes over a longer period through the cycle should be slightly higher, for needing less buffers. It should not be forgotten that the Dutch public first pillar sets a minimum for almost everybody (that offers adequate protection against poverty), irrespective of working or career history.

Investment risk: a large majority of members and beneficiaries will remain in a collective system with collective investment policies that will not be very different from the existing investment policies. But the investment policies will be better tailored towards risk profiles of age cohorts, applying life cycle approaches. Interest rate risk will continue to be hedged to a large extent.

Costs and charges: Dutch IORPs report about costs and charges based on a methodology set in guidelines of the Pensioenfederatie and Dutch prudential supervisor DNB also provides information on cost and charges of individual IORPs on its website. The framework aims to be as comprehensive as possible, based on principles such as no-netting and look-through.I In the current and in the new system, low costs are important to achieve good pensions. Yet, in a system of compulsory participation, individual members and beneficiaries have no option to change IORPs. Therefore, cost-efficiency is achieved in the NL by disclosures of costs to the social partners and supervisor, rather than via members and beneficiaries, still, setting clear reporting standards may be helpful.

Administration and governance: Dutch IORPs are governed by social partners, this will remain unchanged. Employers andemployees will continue to pay premiums. We do not see any big changes from the existing DB scheme towards the new DC schemes in the NL.

Policy options to address the shift 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, taking into account what we mention in the section 'Background information on DC' the current Dutch system could already be categorized as having DC elements and falls within EIOPA's broad definition of "DC" we are cautious on the proposals put forward by EIOPA in this chapter. 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.

For instance, on page 154 EIOPA ("identification of the issue') describes the issue it considers might need to be addressed in the IORP review. As explained above, 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 take into account 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.

Complaints procedures and ADR:

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 what stems from national law.

Financial education:

On financial literacy, we agree that this is important however one should also recognize the limits of such an approach.

Member and/or beneficiary involvement in IORPs governance:

On member and/or beneficiary involvement in IORPs governance (Option 1): The explanation provided by EIOPA does not take sufficient account of the role of social partners. Please see our previous replies in the chapter of proportionality.

In the current advise, 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 and for them to be able to advise on issues that have an impact on them. In light of balanced decision-making on the basis of all stakeholders' interests, the board should have the final say.

Fit and proper requirements:

On fit and proper requirements (Option 1): It seems obvious that members of the board of an IORP have sufficient understanding of the type of pension scheme offered. On the other hand, this advice seems to imply an EIOPA view that DC schemes are inherently more risky for members and beneficiaries than DB schemes, with which we would not agree.

Chapter 6. Sustainability

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

Many IORPs have increasingly ambitious responsible investment policies;a principle-based consideration of double materiality under prudent person rule would match the investment practices of many pension funds. Also, 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).

In view of the future ESG orientation of IORPs, it would not be problematic to consider ESG risks and long-term effects of investment decisions within the framework of the corporate prudence of IORPs. AEIP believes that focus towards ESG and sustainability is a positive thing, but a principles-based approach is needed to ensure that this is achieved and proportionality should be taken into account. EIOPA rightly identifies the challenges in implementing the concept of double materiality: the lack of resources (most IORPs in Belgium have no staff), the lack of data and the higher cost that is specifically burdensome for small and mid-sized IORPs. Drawing the balance between the classical factors of cost, risk, return and in the future the new sustainability factors, should remain a decision for the IORP itself, in order to optimize outcomes for members and beneficiaries. EIOPA should also consider the balance between what EIOPA intends to advise the Commission on proportionality, and on sustainability, if this last bit of advice will considerably raise administrative burdens on small IORPs.

Therefore, care should be taken not to define new/different requirements that are already covered by other EU legislation;in particular SFDR. This is of high importance to ensure the proper functioning of the pension sector and the protection of (pension) members and beneficiaries.

Also, EIOPA proposes to amend Article 28(2)h to use scenario analysis “where sustainability risks are considered”. This seems at odds with the proposed amendment of Article 19(1)b which would require the consideration of sustainability risks. As a result of this, scenario analysis would become mandatory for all IORPs. Scenario analysis requires significant resources such as data and modeling which need to be sourced from external providers. This does not seem a proportional approach. EIOPA cites on p.177 of the consultation the Climate Stress Test Report that presently only 16% of IORPs report using scenario analysis for ESG and sustainability risks. We recommend a “comply or explain” approach.

EIOPA should carefully consider the potential impact of such an inclusion in the IORP Directive, in the context of other EU legislation and in particular the SFDR. We would oppose a situation where the

proposed amendments in IORP2 would make pension schemes automatically fall in Art.8 SFDR or lose the possibility for IORPs of opting-out under Art.4.

Under Art.8 SFDR, the ESAs included in the definition of 'promotion' situations 'where a financial product complies with certain environmental, social or sustainability requirements or restrictions laid down by law' … 'and these characteristics are "promoted" in the investment policy'. This promotion could take the form of information, reporting, general impressions, targets in almost any type of document produced by the IORP. And some of these disclosures are actually compulsory under IORP2. Moreover, IORPs are not able to opt-out from reporting on PAIs 'where they consider principal adverse impacts'. It could be argued that under the proposal on double materiality, IORPs should indeed consider (principle) adverse impacts. It is necessary to contract sustainability data providers for PAI reporting and these costs weigh proportionally much heavier on smaller IORPs.

It is clear that the SFDR does not function only as a disclosure tool, as intended, but also has elements of a labeling tool. This creates problems for consumers, but also financial market participants. Currently it is unclear how that debate will continue, but the SFDR will be reviewed. There are voices, such as the French AMF, that want to introduce more elements of labeling and minimum requirements in the SFDR. This might result in restrictions and exclusions of particular types of investments under article 8. This would then automatically become a restriction of the investable universe for IORPs which might lead to lower investment results and therefore lower pensions. We would expect EIOPA to agree that such an outcome would not be desirable given that EIOPA notes on page 173 of the Consultation Paper : "This does not mean to oblige IORPs making sustainable investments or accepting lower risk-adjusted returns, but rather encouraging the IORPs to consider the potential long-term impacts of sustainability aspects."

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

We agree that as a principle, it is right to consider the preferences of the people on whose behalf the contributions are invested. However, AEIP believes that 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 its governance structures.

AEIP would also like to underline that paritarian pension funds in particular are set up by collective agreements so by design they 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 specific way that the sector operates as well as the particularities of occupational pension funds, we 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.

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

The main purpose of a pension funds, as set up by the social partners, is to provide good pensions. The provisions in (a) and (c) warrant that the portfolio as a whole is managed with this aim in mind. For sure, IORPs, as long term investors are well placed to help financing the green deal within their broader objective of funding pensions. The risk appetite, funding position, sponsor support all play a role in determining the long term investment strategy of an IORP. Moreover, we would support including reference to article 19(1)f.

Diversification is a cornerstone of the investment policy of pension funds. To optimize the expected investment return giving a certain risk appetite IORPs will use diversification implying that IORPs invest in hundreds or thousands of companies. When introducing sustainability considerations IORPs should still be able to maintain such large diversifications and sustainability considerations should not reduce the investment horizon in such a way that it increases the risk of IORP.

AEIP is cautions against copy-pasting related rules from retail products (MiFID, IDD) without taking into account the paritarian and collective nature of IORPs. By usually having a single investment policy and not requiring distribution channels, paritarian IORPs keep costs well below retail products, leading to much higher pension outcomes. However, this means that there is no precontractual phase and employees that are enrolled automatically – due to their employment relationship with their employers - engage differently with information than retail clients as they have no ability to act on information. It is not possible to give them individual choice.

Moreover, we strongly believe that the way that e.g. MiFID conceptualises the outcomes of the consideration of ESG preferences is inadequate in the context of a pension scheme. In the retail sector the provider has to assess whether a product should include underlying article 8 or article 9 SFDR products, Taxonomy-alignment or the consideration of adverse impacts. Preferences do not align with these legalistic concepts and it is difficult to understand how to apply this approach to a portfolio with many different asset classes (equity, bonds, real estate, infrastructure, private, public) and asset management structures (funds and direct mandates).

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

Many IORPs have policies on voting and engagement. IORPs are subject to the Shareholders Rights Directive. Stewardship is regulated by SRD 2, IORPs fall under the scope of the directive. The directive provides institutions with a 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. We deem it important to avoid any possible overlap between these frameworks.

EIOPA advices to amend Article 30. The added value compared to the current practices is unclear to us. We have the impression it will generate primarily 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.

General Question: Do you have any other comments on the following sections in chapter 6:

Broader societal goals:

EIOPA advises raising awareness of to what extent Member States across the EU can take active steps to reduce the gender pension gap, also impacting the social aspect of sustainability. We agree that the gender pension gap is a problem that needs much more attention and should be solved.

However, we question whether the IORP (Directive) is the right place to address solutions to closing the gender gap. The gender pension gap is a problem for society. The IORP has no influence on the continuation of the employment relationship or on the salary on which the contributions regularly depend (albeit indirectly in some cases). The pension can only be saved for those employed in the industry/at the employer. The IORP also does not represent society as a whole, but only the employees within its scope.

Chapter 7. Diversity and Inclusion

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

AEIP and its members fully support diversity and inclusion in the management boards and are committed to creating diverse workplaces and inclusive societies. Studies show that EDI leads to better decision making and is part of good governance. We feel that EIOPA starts out with the correct broad definition of diversity, that recognizes that for inclusion quite a few aspects are relevant, but then takes a wrong turn in effectively reducing the concept of gender to the binary male and female. This happens through the concept of "the underrepresented gender". The use of the definitive article "the", turns the language into something which today, may not be seen as inclusive anymore. Other criteria can be important as well.

AEIP would like to underline that in the paritarian pension funds context (joint management by employers and trade unions) 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 diverge interests are represented. This in itself represents an important diversity that is unknow 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 extend of the fit and proper requirements small and mid-size IORPs sometimes today already have difficulties attracting the right board members. Size is in this context is an aspect that should be taken into account and thus apply proportionality on the principles on 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.

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

EIOPA rightfully acknowledges that D&I is of societal value and should be cross-sectoral consistent across sectors. When looking at an EU definition, we refer to Principles 2 and 3 of the EU Pillar of Social Rights where gender equality and equal opportunities are well established.

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

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 seem acceptable.

General Question – Do you have any other comments on the following sections in chapter 7:

D&I in management bodies:

Diversity and inclusion (D&I) matter and stimulating D&I should be fully embraced. We underwrite EIOPA's analysis (p. 199) that D&I goes beyond the gender balance, given that D&I embraces multidimensional aspects. And that diversity alone is not sufficient and an inclusive approach is crucial.

D&I is an aim of societal importance, not just in the area of IORPs, and/or the IORP Directive. For us, the first starting point should be good governance. It is a well-known fact that – if all members are uniformly fit and proper - diversely composed bodies are able to take better decisions. Governing bodies of an IORP take decisions on behalf of members and beneficiaries, and therefore represent in some form or other the diversity of these members and beneficiaries already, obviously without compromising fit and proper considerations.

We do agree that IORPs should introduce D&I policies not only for recruitment, but also for safety at the work place. Indeed some large Dutch IORPs and large Dutch pension service providers already operate such policies and have made them a priority. It is, according to us, however questionable whether the IORP Directive is the correct instrument for human resources policy.

We believe that 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.

We feel that EIOPA starts out with the correct broad definition of diversity, that recognizes that for inclusion quite a few aspects are relevant, but then takes a wrong turn in effectively reducing the concept of gender to the binary male and female. This happens through the concept of "the underrepresented gender". The use of the definitive article "the", turns the language into something which today, may not be seen as inclusive anymore.

EIOPA assumes that by raising the number of women in a management body, the topic of sustainability will be 'better' discussed, because women 'care more about this issue'. We believe this thinking is too limited on the fullness of what a diverse management body will bring to the IORP. Diversity should not be reduced to the prioritization of other specific topics.

For further information please contact:

Panayiotis.elia@aeip.net

Panayiotis Elia, AEIP Policy Advisor, Pension & Financial Affairs

AEIP Disclaimer

AEIP represents the European Paritarian Institutions of Social Protection in Brussels since 1997. The association gathers 29 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 12 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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