

Consultation paper on technical advice for the review of the IORP II Directive

Fields marked with * are mandatory.

Responding to the paper

EIOPA welcomes comments on the Consultation paper on technical advice for the review of the IORP II Directive.

Comments are most helpful if they:

- respond to the question stated, where applicable;
- contain a clear rationale; and
- describe any alternatives EIOPA should consider.

The consultation paper includes specific questions on some review items. In the survey below, stakeholders can respond to those specific questions and provide any other comments on all parts of the paper.

Please send your comments to EIOPA using the EU Survey tool **by Thursday, 25 May 2023, 23:59 CET** by responding to the questions below.

Contributions not provided using the EU Survey tool or submitted after the deadline will not be processed and therefore considered as they were not submitted.

Publication of responses

Your responses will be published on the EIOPA website unless: you request to treat them confidential, or they are unlawful, or they would infringe the rights of any third party. Please, indicate clearly and prominently in your submission any part you do not wish to be publicly disclosed. EIOPA may also publish a summary of the survey input received on its website.

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By sending your contribution to EIOPA you consent to publication of all information in your contribution in whole/in part – as indicated in your responses, including to the publication of your name/the name of your organisation, and you thereby declare that nothing within your response is unlawful or would infringe the rights of any third party in a manner that would prevent the publication.

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[1] [Public Access to Documents](#)

Remarks on completing the survey

EU Survey supports the last two versions of Microsoft Edge and the latest version of Mozilla Firefox and Google Chrome. Using other browsers might cause compatibility issues.

After you start filling in responses to the survey there is the option to save your answers. However, please note that the use of the online saving functionality is at the user's own risk. As a result, it is strongly recommended to complete the online survey in one go (i.e. all at once).

Should you still proceed with saving your answers, the online tool will immediately generate and provide you with a new link from which you will be able to access your saved answers.

It is also recommended that you select the "Send this Link as Email" icon to send a copy of the weblink to your email - please take care of typing in your email address correctly. This procedure does not, however, guarantee that your answers will be successfully saved.

You will have the possibility to print a pdf version of the final responses to the survey after submitting it by clicking on "Download PDF". You will automatically receive an email with the pdf file. Do not forget to check your junk / spam mailbox.

About the respondent

* Please indicate the desired disclosure level of the responses you are submitting.

- Public
- Confidential
- Partly confidential

* Stakeholder name

Actuarial Association of Europe

* Contact person (name and surname)

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Questions to stakeholders

Executive summary

* Do you have any comments on the executive summary?

- Yes
 No

Chapter 1. Introduction

* Do you have any comments on the introduction?

- Yes
 No

Chapter 2. Governance and prudential standards

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

- Yes
 No

Please explain your answer.

Although it is too early to form a definitive position on this, given the late transposition of the Directive in many MS, our initial view is that the Directive has not achieved a proportionate application of prudential regulation and supervision to IORPs as this depends on the extent to which MS options to apply proportionality have been implemented by NCAs, which is shown in Fig 2.4. to be relatively low. We have questions about the use of Article 5 which provides an MS option for “small IORPs” to be exempted from some or all of the requirements of the Directive – see Q 2.2 below

Q2.2: Should in your view the threshold for the small IORP exemption of 100 members be increased?

- Yes
 No

Please explain your answer and provide any alternatives.

We note from EIOPA's analysis, and our own experience, that a significant number of MS have decided not to apply this exemption i.e. IORPs with less than 100 members are subject to all of the requirements of the IORP. This may be because, for example,

- The MS has few/no IORPs with less than 100 members and hence the threshold is irrelevant
- The MS considered that it was not appropriate to exempt small IORPs from most of the requirements of the Directive
- The MS wished to force consolidation of a large number of small IORPs into larger ones which can be supervised more easily (and hence provide greater security for members)

MS which have applied the Article 5 exemption may have done so because they considered existing national requirements were sufficient.

EIOPA suggests increasing the Article 5 threshold to "less than 1,000 members and beneficiaries and less than €50m in assets". It is noted that this could exempt up to 45% of IORPs from most of the requirements of the Directive. This increased threshold (if applied by MS) would reduce costs of compliance for such IORPs, which could flow through to higher benefits for members and beneficiaries, and would reduce the cost of supervision. However, IORPs below the threshold which are exempt from most of the requirements of the Directive (assuming the MS decides to apply the Article 5 exemption) will be subject to lower levels of regulation and supervision, which poses an increased risk to the IORP and to the benefits of members. AAE does not support this proposal for these reasons. Care should be taken to ensure that any amendments to Article 5 are consistent with "horizontal" legislation, such as DORA, in relation to the treatment of "small IORPs". Our preferred approach is not to have a size-based exemption (although removing the existing Article 5 provisions is not one of the options on the table) but to have proportionate application of the requirements based on risk profile.

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?

- Yes
- No

Please explain your answer.

Although we do not consider that size should be the most important criterion (as is the case in the application of the Article 5 exemption), it should still be considered by NCAs when deciding on the proportionate application of supervision and hence we believe that reference to size should be retained, perhaps with some additional text to make the above point clear. "Size" also has the merit of being objective, and easily determined, whereas the other criteria require judgement. The impact of failure by a very large IORP, affecting perhaps 100,000 members, would be significant from a macroeconomic perspective (and for the reputation of IORPs generally) so that even if they are low-risk, with a low probability of failure, such "systemically significant" IORPs should be subject to an appropriately rigorous level of supervision.

We are neutral on the inclusion or otherwise of the reference to "internal organisation". The important point is that IORPs are well managed, with those responsible meeting fit and proper criteria, and how this is achieved is not the key issue.

To best achieve the objective of proportionality we do not believe that it can be achieved by a comprehensive list of criteria for IORPs including size, but rather by a "comply or explain approach". For some requirements the directive already clearly states the objective of the regulation and should mark them as subject to "comply or explain". The IORP itself either implements the requirement or argues why it achieves the objective without implementing the requirement. As times and circumstances may change the result of the regular validation whether the line of argument still holds could be included in the ORA report.

Q2.4: Do you support option 1 in sub-section 'Low-risk profile IORPs subject to proportionality measures' of section 2.3.5 of defining a category of low-risk profile IORPs in the IORP II Directive and allowing Member States to exempt such IORPs from certain minimum standards in the IORP II Directive?

- Yes
- No

Please explain why or why not.

The IORP Directive is a minimum harmonisation directive. It sets out minimum standards to which MS may add. Currently, all IORPs (except those exempt under Article 5) must comply with the minimum as set out in the Directive, or any higher standards set by MS.

Our preferred approach is to have a proportionate application of the requirements based on risk profile.

The three options proposed address this in three different ways. In each, an IORP may be considered “low-risk profile” and

- Option 1 is to permit “low-risk profile” IORPs to be exempt from some of the requirements of the Directive, even if they exceed the threshold in Article 5.
- Option 2 provides that the requirements as set out in the Directive cannot be increased by MS for “low-risk profile” IORPs e.g. requiring written policies, SIPPS, ORAs etc to be reviewed more frequently than every 3 years. This would provide greater certainty to such IORPs.
- Option 3 provides for higher minimum standards for IORPs which do not meet the definition of “low risk profile” e.g. requiring written policies, SIPPS, ORAs etc to be reviewed annually.

AAE supports the proposal to apply less onerous requirements where an IORP is considered low risk as this is a risk-based approach. The main issue with these proposals is defining “low-risk profile”. EIOPA has set out four requirements, all of which must be satisfied in order to be considered “low-risk profile”, but any such quantitative requirements are arbitrary.

Quantitative limits may encourage IORPs to follow sub-optimal investment strategies if this enables them to reduce the compliance burden. Should the criteria be qualitative or principles-based rather than quantitative? In our view, an actuary should play a key role in determining the level of risk together with the AMSB (taking the final responsibility). The ORA could be a good place to document this assessment (see also answer to Q2.3)

It is important that the definition of “low risk profile” considers the risks related to the members’ benefits so that IORPs where most/all risk is placed on the members are not automatically considered low risk IORPs, but are included in a category where the legal requirements ensure good risk management for the benefits. In an ideal, theoretical, world, the requirements placed on each IORP would be determined by reference to its own risk profile. This would require the NCA to determine or agree with each IORP which elements of the Directive should be applied to it. This is not a practical option but similar approaches which could be considered are

- Scoring each IORP by reference to a number of metrics to give an overall risk measure, and placing IORPs with similar risk measures into buckets which would have progressively more onerous requirements as the risk score increased
- Requiring the IORP to comply with all of the requirements or explain why it was not appropriate /necessary/possible to do so
- Using the results of a (standardised) stress test to determine the level of risk in each IORP.

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?

This issue needs careful consideration by EIOPA in conjunction with NCAs but we would support less frequent and detailed reporting requirements where appropriate. We also recognise that for smaller IORPs the use of detailed quantitative models may impose excessive costs and, in such cases, qualitative reporting may be acceptable, at least initially.

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

- Yes
 No

If yes, please provide your comments or suggestions for conditions to define 'low-risk profile IORPs'.

The four criteria proposed relate to

- The existence of guarantees
- The extent of cross border activity
- Assets
- The extent of “non-traditional” investments

We agree that these are appropriate metrics to consider, but as noted in our comments on Q2.4, any quantitative requirements are arbitrary. If the approach involves a “cliff-edge” i.e. if you are nearly low-risk but are marginally over one of the criteria proposed (say you have 22% non-traditional investments) do you have to meet the maximum requirements or is there some flexibility?

We repeat the comment in Q2.4. that, where risk is borne by members, this should also be duly taken into account in determining whether the IORP is low risk and it should be included in a category where the legal requirements ensure good risk management for the benefits.

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

- Yes
 No

If yes, please provide your comments or suggestions for proportionality measures.

This issue needs careful consideration by EIOPA in conjunction with NCAs but we would support less frequent and detailed reporting requirements where appropriate. We also recognise that for smaller IORPs the use of detailed quantitative models may impose excessive costs and, in such cases, qualitative reporting may be acceptable, at least initially.

Q2.7: The IORP II Directive takes a minimum harmonisation approach, laying down minimum governance and prudential standards. If the concept of low-risk profile IORPs was to be introduced in the IORP II Directive, should institutions that are not low-risk profile IORPs be subjected to standards exceeding the

current minimum, as proposed in the analysis of option 3 in sub-section 'Low-risk profile IORPs subject to proportionality measures' of section 2.3.5?

- Yes
- No

Please explain your answer.

We are not aware of any areas in which the existing requirements in the Directive need to be strengthened. The driver for this proposal seems to be comparability with Solvency II which we do not consider to be an appropriate objective, given the many differences between IORPs and insurance undertakings.

Q2.8: Do you have any other suggestions to ensure a proportionate application of the requirements in the IORP II Directive?

- Yes
- No

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

- Yes
- No

Please explain your answer.

This is an important risk for some IORPs, as was illustrated by the “LDI crisis” last year, and may not be well understood, so we consider that it would be helpful to include an explicit requirement to consider this, where relevant and material, in the ORA and SRP. Guidance could be provided by EIOPA as to how this risk should be measured and reported, although care would need to be taken to ensure that this did not lead to this issue being considered a box-ticking exercise.

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 connect to the IORP?

- Yes
- No

Please explain your answer with relevant supporting evidence.

We note the concerns outlined in the consultation document about conflicts, especially in the context of MIPs. We accept that conflicts can arise, although good governance should lead to any such conflicts being identified and managed appropriately. It is important that there is a clear code of conduct internally for service providers. [We have no evidence of any such conflicts causing difficulties in practice.]

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

- Yes
 No

Please explain your answer with relevant supporting evidence.

As noted in our answer to Q2.10, we consider that the existing requirements for good governance should be sufficient to deal with any such issues. We recommend that consideration of amendments to the Directive in this regard should be deferred until the next review, where there may be some more evidence on which to base any such amendments.

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.

National supervisors should be empowered to collect necessary information from IORPs to enable proper supervision. It is important that the information sought is necessary for supervision and not just "nice-to-have" as excessive reporting requirements may lead to inaccurate data and/or additional costs. In our view, NCAs already have necessary powers to request relevant information, and thus we do not support a change to Article 50.

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

- Yes
 No

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 are not supportive of this idea. As the Directive is a minimum harmonisation Directive, and solvency measures are determined at MS level, a standardised risk assessment is unlikely to provide meaningful information to supervisors or EIOPA.

An alternative approach which we would suggest would be for EIOPA to develop a set of "risk assessment guidelines" with formula/methods for how the different risks can be assessed. The IORPs can then follow these guidelines or do their own assessments (maybe with an explanation on how and why it differs from the guidelines). This will give smaller IORPs with only limited access to, or budget for, actuarial and risk resources a tool/guidance to prepare good risk assessments and can save money.

The objective should always be that transparency is provided to members about the quality of the risk management for their benefits (see also Q2.4) and a certain level of comparability of IORPs in a MS to understand if it's reasonable to accept higher costs for a better service or not.

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

- Yes

No

Please explain your answer.

(no explanation proposed)

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

- Yes
 No

Please explain your answer.

Unnecessary obstacles to diversification should be removed.

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

- Yes
 No

Please explain your answer.

Unnecessary obstacles to diversification should be removed.

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

- Yes
 No

Please explain your answer.

We see no requirement at this stage to specify an ORA policy in the Directive; there is a requirement that an ORA be undertaken and IORPs should develop their own policies appropriate to their own situation. If a supervisor does not consider that the ORA and/or the process by which it has been undertaken is appropriate, this can be challenged and good practice will emerge over time.

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

- Yes
- No

Please explain your answer.

Risk tolerance limits are an essential part of risk management. The ORA is an instrument to support the AMSB. The ORA can examine if the risk tolerance limits are appropriate for the IORP and its stakeholders.

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

	Yes	No
* Section 2.2: Implementation and effectiveness	<input type="radio"/>	<input checked="" type="radio"/>
* Section 2.3: Proportionality	<input type="radio"/>	<input checked="" type="radio"/>
* Section 2.4: Liquidity risk management	<input type="radio"/>	<input checked="" type="radio"/>
* Section 2.5: Conditions of operations and management of conflict of interest	<input type="radio"/>	<input checked="" type="radio"/>
* Section 2.6: Effective use of data	<input type="radio"/>	<input checked="" type="radio"/>
* Section 2.7: Standardised risk assessment	<input type="radio"/>	<input checked="" type="radio"/>
* Section 2.8: Miscellaneous	<input type="radio"/>	<input checked="" type="radio"/>

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?

The Directive should set out minimum requirements for all IORPs, which apply to domestic and cross-border IORPs equally. If it is considered desirable for NCAs to conduct a prudential assessment of all IORPs as part of their registration/authorisation process, and ongoing reviews, then Article 9 should be amended if the cost/benefit analysis is acceptable.

This change should not be brought in purely to address potential cross-border arbitrage – “very small tail wagging the dog”. There hasn’t been much evidence of arbitrage to date – 12% of 0.2% i.e. 0.024% of members and beneficiaries.

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?

Cross-border and domestic transfers should be subject to the same requirements and these should be set at the level which provides protection for members without imposing unnecessary administrative costs and

delays.

It seems desirable that there should be clarity and consistency in relation to the definition and determination of “majority”, and for cross-border transfers, this would need to be specified at EU/EIOPA level.

An alternative approach would be to remove the “consent” requirement in favour of a “consult” one for all transfers, provided that those making the decision on whether or not to transfer act in a fiduciary capacity and are required to consider the interests of all members and beneficiaries.

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

Whilst the concept is attractive in principle, the establishment of pan-European IORPs is challenging, given national SLL, social security and tax, when compared with insurance or banking products which can relatively easily be passported. As noted above, the requirements and implementation of the IORP Directive should not be driven by the desire to establish pan-European IORPs, but by the requirements for governance and supervision of domestic IORPs, which will always comprise the vast majority of IORPs, and the provision of good pension outcomes for their members and beneficiaries. If the framework for IORPs generally is appropriate, a level playing field between domestic and cross-border may encourage some more multinational companies to establish a pan-European IORP to cover most or all of the European businesses.

An alternative approach, as discussed in 3.10.2 is the establishment of a “2nd regime” for pan-European IORPs, which we consider should be give due consideration. PEPPs give this opportunity for Pillar 3 pensions but as yet the market has not developed, so it may be appropriate to consider learnings from the PEPP regime before proceeding down this route.

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

	Yes	No
* Section 3.2: Implementation and effectiveness	<input type="radio"/>	<input checked="" type="radio"/>
* Section 3.3 Relevant Legal provisions	<input type="radio"/>	<input checked="" type="radio"/>
* Section 3.4 Other Regulatory Background	<input type="radio"/>	<input checked="" type="radio"/>
* Section 3.5 Previous EIOPA Reports	<input type="radio"/>	<input checked="" type="radio"/>
* Section 3.6 Prudential Assessment Within Process of Registration or Authorisation	<input type="radio"/>	<input checked="" type="radio"/>
* Section 3.7 Cross-border Transfers	<input type="radio"/>	<input checked="" type="radio"/>
* Section 3.8 Notification Procedures	<input type="radio"/>	<input checked="" type="radio"/>
* Section 3.9 Supervisory Cooperation	<input type="radio"/>	<input checked="" type="radio"/>
* Section 3.10 Potential learning from other frameworks	<input type="radio"/>	<input checked="" type="radio"/>

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.

In NL, a template was set in 2007 in the pensions act. The goal of this template was to be able to add pensions from different providers, and subsequently a pension tracking service has been built. In the latest revision of the pensions act it was concluded that the aimed goal has been achieved and therefore the rules for a template were abandoned. One of the main reasons for this was the huge impact on pension providers to annually change the template as it turned out that almost every year the template was changed.

We note that three options for change are proposed to achieve greater consistency in PBSs:

- Principles-based requirements
- EU template (e.g. as per the EIOPA models or the PEPP BS)
- MS designed template (which already exists in some MS)

We are supportive of the third option; we do not think an EU template would be appropriate due primarily to concerns about having to provide for “one-size-fits-all”. In any event, few workers have benefits in more than one MS so MS-specific templates would be more appropriate for the majority.

We would also support the suggestion that “this could be supplemented by EIOPA developing guidance...”

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

We support the proposal but with very limited information on the “front page” i.e. provide a link to more information on sustainability. The three issues in the bullet points in 4.2.5 are sensible but will need to be expressed concisely to avoid information overload.

It is important to understand the goal of the distribution of this information. If the objective is to help members take informed decisions, then one could argue that this is unlikely to be achieved due to the lack of financial literacy of members. If the goal is to encourage IORPs/pension providers to be more sustainable, then requiring them to disclose some high-level information to members may help to force this.

We recommend that where appropriate a consistent approach to member communications be adopted across similar savings vehicles i.e. IORPs, PRIIPs, PEPPs.

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

Proposed amendments to Article 38 are set out; these include a requirement that the PBS “shall provide information on the level of risk borne by the member”. This is an area where an actuary can help in providing the right technical information.

We support the proposal in 4.2.6 to provide information on

- Past performance (DC schemes)
- Investment options (DC schemes with member choice)

but this should not be “front page” material, but available through links in a layered approach. It would be important to make it clear that the past performance data is given for information, and should not be considered as a guide to future performance.

We strongly support the “layering” approach, with just the key information (“level 1”) on the front page i.e. the information necessary for the member to see what benefits/fund has accrued to date, and what they might expect at retirement. Information on issues such as investment choices, sustainability and costs and charges should be readily accessible at “level 2”, and should also be explained in simple terms, with, where necessary, further links to more detailed information at “level 3” which would be of value to more financially sophisticated members, or professional advisers.

We recommend that where appropriate a consistent approach to member communications be adopted across similar savings vehicles i.e. IORPs, PRIIPs, PEPPs.

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)?

It is too early to say, in MS which have only recently introduced a PBS requirement, how well this has worked and it would be instructive, once these have been issued by all IORPs, to undertake consumer research to assess the success or otherwise of the PBS.

Some MS have had pensions statements similar to the PBS for a number of years. In DK the largest IORP has had a PBS for many years very similar to the IORP II requirements and it has been well accepted by the members through all the years. In IE, it has been a requirement to issue a benefit statement for many years, with illustrated projections of retirement benefits for DC plans; these provide useful information but are quite lengthy and in practice are probably not read by many of those who receive them.

It should also be recognised that having a PBS facilitates the collation of information from a number of IORPs and with other pensions generally via a PTS.

On balance, we consider that the PBS is a good base to which to add information on issues as proposed but with an emphasis on being concise and understandable for those who are not financially sophisticated.

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.

The discussion in 4.3.1 focusses on digitalisation in the context of the PBS but notes “digitalisation is also relevant for the other information requirements”. We agree that all relevant information which is to be made available to members should be easily accessible via a website, with suitable protection for personal or sensitive information. This enables the information requirements for all members to be addressed without forcing too much information on members who will not read it, and may as a consequence miss the important information which they need to plan for their retirement. The information can also be kept up to date, in contrast to a PBS which provides information as at a fixed date but will be out of date to some extent when it is received by the member or beneficiary, particularly when investment markets are volatile.

As noted above, we strongly support the “layering” approach, with just the key information (“level 1”) on the front page i.e. the information necessary for the member to see what benefits/fund has accrued to date, and what they might expect at retirement. Information on issues such as investment choices, sustainability and costs and charges should be readily accessible at “level 2”, and should also be explained in simple terms, with, where necessary, further links to more detailed information at “level 3” which would be of value to more financially sophisticated members, or professional advisers.

We appreciate that there are members and especially beneficiaries who may not have access to, or be comfortable with, digital information and that widespread use of the internet may not (currently) be the case in all MS. Members and beneficiaries who wish to receive paper copies information must be facilitated (free of charge) and in our view this can reasonably be achieved via Option 2 i.e. members and beneficiaries should be advised that all documents are available online and that members and beneficiaries who wish to receive hard copies should request this. We consider this is preferable to asking members to choose between digital and paper as inevitably a significant number will not respond and the IORP will have to decide how to deal with them

Options 3 and 4 propose prescribing requirements in relation to choice architecture and synergies with PTS and pensions dashboards. We are supportive of the principle, but would wish to see what requirements are

prescribed, and how onerous they might be to implement, before forming a definitive view on these proposals.

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

EIOPA proposes to “further develop the provisions in the Directive on cost transparency”. We support the principle of transparency to members and beneficiaries of costs and charges incurred which impact on their retirement outcomes. However, it is important not to focus too much on costs, as other factors such as quantity and quality of services provided in return for the charges, and the potential return on investments are also important (and less easily evaluated).

Control of costs is of course important to achieve good investment returns, but members cannot easily understand this because costs are opaque in many cases. In NL, costs transparency has been a big issue since 2011 but this has led to pension providers looking only at the lowest costs and not at what a member gets in quality of service.

The Directive does not currently spell out which costs need to be disclosed, unlike other regimes such as PRIIPs and MiFID II. This can lead to different levels of disclosure between IORPs and between IORPs and other savings vehicles which is not desirable.

We recommend that the detail is not on the front page (“level 1”) of the PBS but is still given prominence – i. e. not just in the small print.

We are not in a position to comment on possible challenges in the implementation of additional requirements.

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.

We agree that providing members with an estimate(s) of their projected retirement benefits is crucial as it will help them to decide what actions, if any, they should take to provide for their desired level of retirement income. The biggest challenge is presenting the information in an understandable way, bearing in mind the differing levels of financial literacy of members.

We agree that where the retirement benefits depend on future investment returns, members should receive projections based on “best estimate” assumption, an “unfavourable scenario, and a “favourable scenario”, to demonstrate the uncertainty of future outcomes. Whilst we appreciate that the intention of the legislators in introducing an unfavourable scenario requirement in the 2016 review was to alert members to the fact that they could “lose money”, this encourages members to invest in low-risk, low-return assets which is likely to lead to inadequate retirement income.

We would recommend that careful consideration be given to the terminology used and how to illustrate the alternative scenarios. In particular, we think that many members may not understand that the term “best estimate” means the central scenario; we note that in the PEPP Benefit Statement this has been changed to “if your investments have medium success” which may be clearer but is very cumbersome. We agree that outcomes should be illustrated in real terms i.e. so that members can assess the purchasing power of their projected pensions

We would support Option 1 as outlined.

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

We do not see benefit in an EU approach as we are advocating for an MS-specific template. It should be for the MS to decide how assumptions for projections are determined as currently provided in Article 38. Some guidance from EIOPA to NCAs may be helpful.

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.

We support the principle although care would need to be taken to ensure the costs of compliance do not exceed the benefit to members of the additional requirements.

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.

Issues such as investment strategy and choice architecture, any risk-sharing mechanics or guarantees, member options, etc.

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 additional suggestions

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

The proposed text requires that IORPs in which members and beneficiaries bear risks “must act fairly and in accordance with the best interests of members and beneficiaries, and provides prospective members, members and beneficiaries with the necessary tools to properly assess the choices or options provided by the IORP.”

This would be beneficial to members, and potentially onerous for IORPs, so the cost/benefit analysis would need to be considered. There is also quite a burden on NCAs who have to “ensure that every IORP... acts fairly and in accordance with the best interests of members.”

It is important to recognise the role of the employer and to ensure that the IORP does not have responsibilities with regard to the employment relationship.

We support the requirement that the choice architecture needs to be clear and user-friendly.

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

The primary requirements are that members get the benefits which they expect and that they are provided with sufficient clear and understandable information to enable them to make appropriate choices.

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

	Yes	No
* Section 4.2.1 General evaluation of the functioning of the PBS	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.2.2 Previous EIOPA reports	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.2.3 Relevant legal provisions	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.2.4 Structure and format of the PBS	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.2.5 Information in the PBS on sustainability factors	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.2.6 Other considerations regarding the contents of the PBS	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.3 Digitalisation	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.4 Transparency on costs and charges	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.5 Projections (Information on potential retirement benefits)	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.6.1 Appropriate structuring and implementation of the scheme	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.6.2 Duty of care	<input type="radio"/>	<input checked="" type="radio"/>

Chapter 5. Shift from Defined Benefit to Defined Contributions

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

The key long-term risk for members is retirement risk i.e. that retirement income will be inadequate which may in turn derive from investment risk, or inappropriate investment choice relative to risk tolerance. This can be assessed using the PBS. Other risks are more in the nature of operational risk e.g. excessive charges.

Long-term risk assessments are a useful tool, particularly in circumstances where individual may or are required to make a choice of investment strategies. The appropriate investment strategy should reflect the member's own risk tolerance which will depend on issues such as personal and family circumstances, state of health, other assets etc. Ideally each member would be in a position to take personal financial advice but this is impractical/expensive (and indeed some members might decline to engage in such a process).

In practice, where members have a choice, the vast majority will select the default option, so it is important that this is appropriate for all members based on a "collective risk tolerance". One practical approach could be to have as the default a lifecycle strategy where the level of risk taken is higher at younger ages.

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?

As noted above, long-term risk assessments are important in such cases.

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?

As already noted, reporting on costs and charges is a benefit for the member. Transparency on costs and charges is not the goal itself but enables the assessment of the triangle of costs, return and service so that the optimal choice can be made. NCAs should play a role to make sure the cost reporting is correct and can be compared to other providers and related to the provided services, and this should apply also in the case of mandatory membership and/or no investment choice so that the best cost/ return/ service can be provided for members.

The onus on ensuring that costs and charges provide value for money should be on the IORP/NCA and not left to the member, who may think “cheapest is best” leading to a reduction in quality of service. IORPs should disclose information which enables a like for like comparison, i.e., costs for similar services and make clear that one cannot easily compare different service levels.

This issue has already been addressed in the context of the PBS. If costs and charges are shown in the PBS, it is not clear why further reporting is necessary.

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?

Is the objective here to ensure that NCAs are supervising appropriately, or to give IORPs an insight into what NCAs will do? This may lead to IORPs “own risk assessment” becoming a box-ticking compliance exercise. The advantages are (a) the IORPs ORAs will reach a minimum standard, (b) supervision will be easier and (c) costs may be lower. There is however a risk of “group think” and treating the risk assessment as a compliance exercise based on the framework.

However, there is merit in having some guidance from the NCA as to the best practice in relation to risk assessment. This will also provide greater transparency for members and beneficiaries.

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

	Yes	No
* Section 5.2: Europe and European Pensions Markets are shifting	<input type="radio"/>	<input checked="" type="radio"/>
* Section 5.3: Background information on Defined Contributions	<input type="radio"/>	<input checked="" type="radio"/>
* Section 5.4: Previous EIOPA Reports	<input type="radio"/>	<input checked="" type="radio"/>
* Section 5.5: Policy options to address the shift to DC	<input type="radio"/>	<input checked="" type="radio"/>

* Section 5.5.1: Long-term risk assessment	<input type="radio"/>	<input checked="" type="radio"/>
* Section 5.5.2: Supervisory reporting on costs and charges	<input type="radio"/>	<input checked="" type="radio"/>
* Section 5.5.3: Complaints procedure and Alternative Dispute Resolution (ADR)	<input type="radio"/>	<input checked="" type="radio"/>
* Section 5.5.4: Article 51.2 - Increased transparency of National Competent Authorities – Risk assessment framework	<input type="radio"/>	<input checked="" type="radio"/>
* Section 5.5.5: Financial education	<input type="radio"/>	<input checked="" type="radio"/>
* Section 5.5.6: Member and/or beneficiary involvement in IORPs governance	<input type="radio"/>	<input checked="" type="radio"/>
* Section 5.5.7: Fit and proper requirements	<input type="radio"/>	<input checked="" type="radio"/>

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?

We consider that it is appropriate to align the requirements (and the terminology) in relation to sustainable investment with those of other regimes e.g. CSRD / MiFID II, recognising that proportionality is necessary for IORPs with fewer resources e.g. permitting qualitative rather than quantitative, and deterministic rather than stochastic approaches. Reporting requirements might also be less onerous for such IORPs.

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))?

The primary responsibility for investment lies with the Board/trustees who should invest in the long-term interests of members, which will include sustainability considerations. It would be challenging for IORPs to “gauge membership preferences”, as one might expect that only those with strong preferences may respond and we do think that this should be expected.

However, where members have a choice of investment strategies, it is appropriate to provide options which reflect the members’ preferences (subject to the option meeting other criteria around risk etc.) so that they can choose to have their funds invested in accordance with their preferences and set as the standard/default option a sustainable investment strategy (e.g. following Article 8/9 criteria).

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 primary responsibility for investment lies with the Board/trustees who should invest in the long-term interests of members, which will include sustainability considerations. These should not be given priority over the other aspects of the prudent person policy.

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?

We would support a requirement on IORPs to have a stewardship policy, subject to this being applied in a proportionate manner. In practice, smaller IORPs will invest in pooled vehicles and hence the requirement should be included in their contracts with the fund managers. A requirement to reflect members' preferences may cause difficulty for the reasons outlined previously – the IORP should not become an activist shareholder just to reflect possibly extreme views of a minority of members who express their preferences.

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

	Yes	No
* Section 6.2: Relevant provisions in IORP II Directive and other regulations	<input type="radio"/>	<input checked="" type="radio"/>
* Section 6.3: Previous EIOPA reports	<input type="radio"/>	<input checked="" type="radio"/>
* Section 6.4: Other regulatory background	<input type="radio"/>	<input checked="" type="radio"/>
* Section 6.5: The integration of sustainability factors in investment decisions	<input type="radio"/>	<input checked="" type="radio"/>
* Section 6.6: The fiduciary duties	<input type="radio"/>	<input checked="" type="radio"/>
* Section 6.7: Stewardship	<input type="radio"/>	<input checked="" type="radio"/>
* Section 6.8: Broader societal goals	<input type="radio"/>	<input checked="" type="radio"/>

Chapter 7. Diversity and Inclusion (D&I)

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

We support the view that diversity and inclusion should lead to better management decisions and the principle that AMSBs should strive to be diverse and inclusive. There are some practical issues which need to be considered

- Fitness and propriety must be the key requirement; the fitness requirement will inevitably lead to under-representation of the young (lack of experience) and less well-educated (lack of expertise).
- Some members of the AMSB/trustee board may be elected by (groups of) members and beneficiaries; although these groups can be encouraged to have a diverse slate of candidates, it is impossible to ensure that the elected representative meet diversity/inclusion criteria and to reject duly elected representatives on these grounds would be undemocratic.
- Where the membership of the IORP is not itself diverse and inclusive, is it appropriate/practical to require a diverse and inclusive AMSB?
- In some cases, a trustee may be a corporate entity (e.g. a professional trustee). How is this taken into account in deciding diversity and inclusion targets?

Gender-neutral remuneration policy is of course necessary.

We would take the view that the Directive should promote and encourage diversity and inclusion, and require IORPs to report on their policy and if how/if they are achieving it in practice (comply or explain). Imposing strict requirements and targets for gender “balance” may lead to box-ticking compliance which may not in practice lead to appropriately diverse and inclusive boards. This approach also permits for a proportionate application.

Note that in considering references to gender, it should be recognised that gender is non-binary.

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?

An EU level definition (covering all entities) would be helpful, so long as it was an appropriate definition. If practical, it should cover all aspects of diversity.

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?

We support the first proposed amendment to Article 21 (reporting on diversity & inclusion) but not the second (referencing the target for the under-represented gender). The policy and the report to the authorities should also be available to members and beneficiaries.

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

	Yes	No
* Section 7.2: Relevant legal provisions	<input type="radio"/>	<input checked="" type="radio"/>
* Section 7.3: Previous EIOPA reports	<input type="radio"/>	<input checked="" type="radio"/>
* Section 7.4: Some national practices	<input type="radio"/>	<input checked="" type="radio"/>
* Section 7.5: D&I in management bodies	<input type="radio"/>	<input checked="" type="radio"/>
* Section 7.6: Reporting on D&I	<input type="radio"/>	<input checked="" type="radio"/>

Annexes

* Do you have any comments on the annexes?

- Yes
 No

Any other comments

* Do you have any other comments on the consultation paper?

- Yes
 No

Contact

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