

AAE Response to the European Commission Consultation on the Review of the IORP II Directive

The Actuarial Association of Europe (AAE) welcomes the opportunity to respond to the European Commission's proposal on IORP II. Actuaries are essential to sound risk management, financial stability, and the long-term resilience of the European pension sector. We support the Commission's aims to encourage long-term investment and reduce unnecessary burdens, while ensuring adequate retirement income. We emphasise that the overriding objective of the framework must always remain the protection of members and beneficiaries. Our more detailed comments are set out below and the technical attachment.

- **Prudent Person Principle & Investment Flexibility:** We welcome the move towards a more principles-based prudent person principle that avoids blank prohibitions on specific asset classes. A diversified portfolio, including alternative assets like private equity, infrastructure, and real estate, can significantly enhance long-term returns for members, provided these are managed under robust risk safeguards. We propose that Member States should not apply overly restrictive quantitative limits that hinder efficient asset allocation and diversification.
- **Duty of Care & Governance:** The AAE supports the introduction of an explicit duty of care, requiring IORPs to act honestly, fairly, and professionally in the best interests of members and beneficiaries. To ensure legal certainty, this duty must be anchored in clear behavioural expectations and supported by technical guidance. Governance requirements, including fit and proper assessments and prudential standards, must remain proportionate to the risk profile of each IORP, considering the nature, scale, and complexity of the IORP's activities and allowing for professional judgement. While collective fitness is appropriate for management bodies, individuals effectively running the IORP should be assessed individually based on their specific roles.
- **Scale & Operational Efficiency:** We recognise that achieving sufficient scale is a prerequisite for cost-efficiency, investment diversification, and accessing complex asset classes. While consolidation should be facilitated through simplified domestic and cross-border transfer rules, it should remain a market-driven process shaped by social partners and sponsors rather than a mandatory requirement. We support the introduction of a regular supervisory dialogue to identify structural challenges and encourage strategic reflection on the long-term sustainability of IORPs.
- **Transparency & Member Communication:** We support the enhancement of the Pension Benefit Statement (PBS) and its integration with digital Pension Tracking Systems (PTS). While the AAE supports the PBS, we prefer Member State-specific templates over a single Union-wide standardised format to respect national specificities, but through union-wide principle-based guidelines. We propose a layered approach to information, especially in digital formats, to ensure clarity and avoid information overload while ensuring members can access depth when needed. Projections should include a range of economic scenarios—favourable, best estimate, and unfavourable—to provide members with a realistic view of potential benefits. Furthermore, it is suggested that the Directive should mandate EIOPA's technical guidelines for calculating performance measures and economic scenarios to ensure comparability and prevent bias.

Transparency must focus on 'value for money' rather than costs in isolation.

- **Sustainability Risks:** The AAE supports the explicit integration of sustainability risks into investment decisions and risk management. IORPs should reflect members' sustainability preferences where these are consistent with long-term investment principles and fiduciary duties.

Our detailed comments on the draft Directive are included in the attachment, which provides analysis of specific articles and provisions in the Directive.

Technical Attachment: Detailed Comments on the Proposal to Amend Directive (EU) 2016/2341

1. Scope and Proportionality

Article 5 – Small IORPs

In our December 2024 Position Paper, the AAE supported EIOPA's proposal that the quantitative threshold for small IORPs should be increased to '1,000 members and beneficiaries and less than €25 million in assets', provided this was accompanied by a phasing out of grandfathering clauses. Our view is that proportionality measures should ideally be driven by the risk profile of the institution and its members rather than by an arbitrary size-based exemption, ensuring that all citizens receive an appropriate and equivalent level of protection – although we acknowledge that a quantitative threshold may be used as a proxy for risk. To this end, we suggest it would be beneficial to explicitly account for "beneficiaries" within the definition as many run-off portfolios consist primarily of beneficiaries rather than active members, yet they represent substantial assets, liabilities, and risks that warrant robust oversight. We understand that the European Commission has decided to retain the existing 100-member threshold in the current proposal to ensure a consistent level of protection across the Union. However, as the protection of both members and beneficiaries is central to our perspective, we suggest that the newly introduced risk- and scale-based provisions in the revised Directive may eventually render such a quantitative threshold redundant, as they clarify how smaller institutions should operate regardless of their size.

2. Governance and Risk Management

Article 12 – Collective Transfers

We propose that Article 12 be amended to require an actuarial statement and a risk function statement from both the transferring and receiving IORP to enhance the security of member and beneficiary interests. Furthermore, we suggest that where an IORP's internal rules require a higher approval threshold than a simple majority, such rules should be respected. It might be helpful to clarify the term 'simple majority of the representatives' to ensure that the underlying member vote is accurately reflected, especially in cases where representative bodies have vastly different membership scales.

Article 13 – Technical Provisions

We suggest adding a requirement for the calculation of liability cashflows. From an actuarial

perspective, such cashflows are essential for effective Asset-Liability Management (ALM) and Liability-Driven Investment (LDI) strategies and should be considered a core component of a modern prudential pensions regime.

Article 15 – Regulatory Own Funds

We propose that solvency requirements should be risk-based, particularly for IORPs that underwrite guarantees, such as financial or biometric risks. We suggest adding a requirement for risk-based solvency and granting the Commission the power to adopt delegated acts on this topic to ensure prudent risk management when the IORP holds the full risk.

Article 18a – Stress Testing

We propose that the stress testing framework should be comprehensive and realistic. We suggest removing the fixed floor and cap (0.0% and 3.5%) on interest rate stress, as these may not adequately capture market volatility. Furthermore, it is proposed that the stress test be expanded to cover other material risks, including inflation, sponsor credit risk/contribution risk, lapse risk, and disability risk etc. We suggest requiring an assessment of the effects on benefits, which is highly relevant for schemes where members bear some or all of the risk.

Article 23 – Recovery Plan

In cases of temporary underfunding, we suggest that the recovery plan should be explicitly linked to the strength of the sponsor covenant. The sustainability of the recovery plan and the sponsor's ability to fund it are critical factors that should be considered.

Article 27 – Actuarial Function

We suggest widening the requirement for the actuarial function to include IORPs without biometric cover or guarantees, such as pure Defined Contribution (DC) schemes. The actuarial function can provide valuable analysis to support the duty of care, specifically regarding risks to benefits or risks from the sponsor perspective.

3. Investment Rules

Article 19 – Prudent Person Principle

We welcome the move from a prudent person rule to a prudent person principle. We recommend expanding the definition of 'regulated markets' in Article 6 to include equivalent third-country markets, as set out in EIOPA's advice, and treating Multilateral Trading Facilities (MTFs) and Organised Trading Facilities (OTFs) consistently. We propose that Member States should avoid overly restrictive national investment limits that might hinder efficient asset allocation and diversification.

Article 30 – Statement of Investment Policy Principles (SIPP)

We suggest adding a clear requirement for the identification and communication of benchmarks in the SIPP. This information is necessary for the public and members to evaluate performance against chosen objectives.

4. Information and Transparency

Article 37a – Pension Tracking Systems (PTS)

We propose that the goal of a PTS should be to facilitate secure access to pension data rather than solely raising awareness. We suggest that legislation is not strictly necessary to establish a PTS, as industry-led initiatives have proven successful. It might be helpful to clarify that ‘up-to-date’ should be defined at the national level to reflect existing practices and legislation. We propose a phased approach to coverage, as history shows it takes years to cover all entitlements. Furthermore, EIOPA should research whether data currently used by national PTSs are in line with Pension Benefit Statement (PBS) data before mandating new standards.

Furthermore, we suggest that the Directive should acknowledge that PTS facilities are cross-pillar instruments by nature, encompassing state (Pillar 1) and private (Pillar 3) pensions in addition to occupational schemes. Given that not all occupational pensions are provided via IORPs, it is important that any wording in this Directive remains mindful of this broader landscape. We propose that the regulatory framework should focus on facilitating IORP-specific data transmission while avoiding the imposition of standards or regulations on pension types that fall outside the Directive’s legal mandate, thereby ensuring sufficient room for diverse national and industry-led tracking solutions.

Article 38 – Pension Benefit Statement (PBS)

While we support the enhancement of the PBS, we strongly prefer Member State-specific templates over a single Union-wide standardised format to respect national specificities. We suggest that the PBS be designed with a behavioural purpose, providing a ‘call for action’ to encourage member engagement. Projections should include a range of economic scenarios—favourable, best estimate, and unfavourable—to provide members with a realistic view of potential benefits.

Article 39 – Costs and Performance Measures

We suggest that the Directive should mandate EIOPA technical guidelines for the calculation of performance measures and economic scenarios (favourable, best estimate, and unfavourable) to ensure comparability and prevent bias. We propose that transparency should focus on ‘value for money’ rather than costs in isolation to avoid deterring investments in higher-performing, illiquid asset classes such as private equity.

Article 41a – Underperformance

We note that the concept of ‘underperformance’ is new and requires further technical consideration.

We suggest it should be clarified whether this is intended to apply to Defined Benefit (DB) IORPs with no profit-sharing mechanisms or other similar mechanics involving discretionary benefits to members and beneficiaries and whether public disclosure of such results achieves a clear benefit for members.

5. Duty of Care and Supervision

Articles 44a–d – Duty of Care

We welcome the introduction of an explicit duty of care. We suggest that this duty should require IORPs not only to inform members but also to guide them regarding the potential consequences of their decisions, particularly where choices are complex. We suggest that when an IORP does not hold the power to act itself, it should be responsible for communicating duty of care breaches to those in power, such as the sponsor or social partners. We further propose generalising Article 44b to cover any material risk borne by members, such as longevity risk, rather than only investment risk. Finally, its implementation should consider the additional legal responsibilities and liabilities it may place on actuaries and risk managers.